

भारत का राजपत्र **The Gazette of India**

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No. 34] NEW DELHI, SATURDAY, AUGUST 24, 1968/BHADRA 2, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड ३—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़ कर)

केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विधिक प्रादेश और अधिसूचनाएं ।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

ELECTION COMMISSION OF INDIA

New Delhi, the 26th July 1968

S.O. 2821.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 22nd/23rd April, 1968 by the High Court of Gujarat at Ahmedabad in Election Petition No. 22 of 1967.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ELECTION PETITION No. 22 OF 1967

22/23rd April 1968

District: Banaskantha.

Popatlal, son of Manilal Joshi, aged about 37 years, by caste Brahmin, Occupation Social Work, residing at Pathhar Sadak, Palanpur, District Banaskantha, North Gujarat—
Petitioner.

Versus

1. Manubhai, son of Nandlal Amersey, aged about 38 years, by caste Vaishya, Occupation business, residing at Green-Fields, 134, Backbay Reclamation, Bombay 1.
2. G. G. Mehta, alias Gordhandas, son of Girdharlal Mehta, aged about 54 years, by caste Vaishya, occupation Bar-at-Law and Social work, residing at House No. 1, 1652, Radhanpuri Building, Kirti Stambh, Palanpur, Dist. Banaskantha, North Gujarat.

3. Jivrajbhai, son of Kesarbhai Desai, aged about 40 years, by caste Rabari, occupation business, residing at C/o, Shri Dhanabhai Hirabhai Khatana, P. O. Sihori, Taluka Kankrej, Dist. Banaskantha, North Gujarat and—
4. Raisinhji, son of Kesarisinhji Jadeja, aged about 47 years, by caste Kshatriya, occupation Jagirdar, residing at Village Soneth, Taluka Wav, Dist. Banaskantha, North Gujarat—*Respondents*.

Mr. C. T. Daru with M/s. K. G. Vakharia and H. M. Mehta, Advocates—for the *Petitioner*.

M/s. I. M. Nanavaty and P. M. Ravel—for respondent No. 1.

Mr. N. J. Mehta—for respondent No. 2.

Respondent No. 3, served, absent.

Mr. G. C. Patel for respondent No. 4, declared that he had no instructions from Respondent No. 4.

CORAM: N. K. VAKIL J.

(22-23rd April 1968)

ORAL JUDGMENT

This election petition is filed to challenge the election of Manubhai N. Amersey, the first respondent, who contested the election as a candidate for the Swatantra Party from the parliamentary constituency of Banaskantha Palanpur to the Lok Sabha in the general elections held on the 18th of February 1967. The petitioner is an elector in the said constituency and was an active worker and supporter of the second respondent Shri G. G. Mehta who contested the election as a candidate of the Congress party, and lost the election by a difference of 4,407 votes. The third respondent was an independent candidate who secured only 14,265 votes as against 1,05,621 by the second respondent and 1,10,028 by the first respondent. The official symbol of the first respondent was the Star and that of the second respondent two bullocks with yoke on. The third respondent though duly served has not appeared. The fourth respondent was the official candidate of the Swatantra Party for the Radhanpur constituency for the Gujarat State Assembly. He has been joined in the petition on the ground that corrupt practices were committed by him and/or his election agent, though no relief has been asked against him. He has appeared through his advocate and filed his written statement denying the allegations made against him. Apart from that however, he has taken no part in the proceeding.

The petition as originally filed was based on various grounds but the petitioner at one or the other stage gave up those grounds as I shall point out hereafter and has ultimately contested the petition only on the ground of corrupt practice of undue influence of inducing or attempting to induce the voters to believe that they will be rendered objects of divine displeasure or spiritual censure falling in section 123(2), proviso (a) (ii) of the Representation of Peoples Act, 1951 which shall be referred to hereafter as 'the Act'. I shall therefore refer to the other grounds just to indicate that they were and state the facts regarding the ground ultimately relied upon by the petitioner in some details and the stand of the first respondent in respect thereto.

The petition was based on the following grounds:—

(1) The first respondent or his election agent and/or other persons with the consent of the first respondent or his election agent, committed (i) the corrupt practice of incurring or authorizing expenditure in connection with the election of the first respondent for in excess of the maximum amount prescribed, details and particulars whereof are given in sub-para (A) to (H) of para 11. By an order granting an amendment dated 25th September 1967, further particulars were added; (ii) corrupt practice of bribery as alleged in para 12 of the petition; (iii) corrupt practice of undue influence by directly or indirectly interfering or attempting to interfere with the free exercise of electoral rights of several voters by giving threats as detailed in para 13 of the petition. By order dated 25th September 1967 permitting amendments further particulars were added; (iv) Corrupt practice of appealing to the voters in the name of the cow, which is a religious symbol as detailed in para 15 of the petition; (v) corrupt practice of hiring of or procuring or using horse carriages and mechanically propelled vehicles for freely carrying voters to the polling stations as alleged in para 16 of the petition. Further particulars were added by the amendment granted by the Order of the Court dated 25th September 1967; (vi) corrupt practice of obtaining assistance of—Government servants as alleged in para 17 of the petition.

(2) The result of the election was materially affected in so far as it concerned the returned candidate by improper reception, refusal or rejection of votes or the reception of void votes as alleged in para 19 of the petition.

The second respondent supported the petition by filing a written statement. But the first respondent denied all the allegations and the grounds referred to hereinabove. I do not find it necessary to mention the details thereof as all these grounds were given up at various stages as mentioned hereafter.

As regards the ground which the petitioner adhere to till the end for the purposes of supporting the petition, the averments in the petition as it originally stood were that the first respondent, his agents and other persons with the consent of respondent No. 1 and/or his election agent have directly or indirectly interfered or attempted to interfere with the free exercise of the electoral rights in as much as they have induced the voters or attempted to induce the voters to believe that they will be rendered objects of divine displeasure or spiritual censure and as some of the instances he alleged as under :—

(a) One Himatlal Mulani who was the election agent of respondent No. 4 who with the consent of respondent No. 1 also carried on propaganda for him. Mulani in the last two weeks of January 1967 put up a Board in front of the election office at Radhanpur showing a picture of the cow being slaughtered by the neck with a sword. There are further allegations in respect of this instance but it is not necessary to mention them as this allegation was ultimately given up.

(b) One Shambhu Maharaj, a well-known saint and Kirtankar and a social worker of Gujarat, held meetings for supporting the candidature of the first respondent at the instance of and with the consent of the first respondent at places and dates mentioned in sub-para (b) para 14, of the petition. The first respondent and/or his said election agent had attended and addressed the said meetings supporting the line of argument on the basis of cow-slaughter considered as a sin committed by congressmen including congress candidates which was adopted by the said Shambhu Maharaj. At each of the aforesaid meetings Shambhu Maharaj appealed to the religious feelings of the people in the audience and exhorted them not to vote for the Congress party candidates including the second respondent and pointed out that if they votes for the Congress party candidates, the voters would commit the sin of cow slaughter and urged them in the name of mother cow to take vow not to vote for the Congress party candidates. The petitioner averred that the said appeal, exhortation and urging as aforesaid of Shambhu Maharaj amounted to inducing or attempting to induce the electors to believe that the electors would, by voting for any congress party candidate including the second respondent, become or be rendered an object of divine displeasure or spiritual censure. By an amendment made under the orders of the Court dated 25th September 1967, allegations in respect of one Bava Mohananand Maharaj and Bava Laxmanpuri as instances of the said corrupt practice were added. As they have also been subsequently dropped, I do not find it necessary to give any details thereof. Further instances were given in sub-paras (c), (d) and (e) of para 14 but they are also not pressed and therefore I am not mentioning the details thereof.

The most material part of the pleading however was added as particulars or instances of the corrupt practice of undue influence in para 14 by the amendment allowed by order dated 7th March 1968. By the said amendment, several passages from the speeches made by Shambhu Maharaj at various places have been incorporated in the petition. Verbatim notes of these speeches were taken by the police constable deputed for the purpose to take shorthand notes and which reports are produced in evidence. At this stage I do not refer to all the details thereof as I shall have to deal with them in details when I discuss the respective submissions of the parties. It may be observed here that the first amendment of the petition was allowed by Divan J. and the second was permitted by myself. In the respective orders passed by us for reasons stated therein, it is made very clear that the petitioner shall be entitled to lead evidence and rely upon the grounds of corrupt practice of undue influence falling within the purview of section 123(2) proviso (a)(ii) of the Act and not the one contemplated by section 123(2) in its first part and exclusive of the proviso.

The petitioner alleged in para 18 of the petition, the corrupt practice on the ground of use of or appeal to the religious symbol of the cow. As an instance of the said corrupt practice, reliance is placed in the said para on an alleged pamphlet published by one V. P. Gupta, Secretary of the Sarvodaya Gau Rakshak Samiti. It may however be mentioned that the petitioner has made no attempt to establish this instance but in para 18, the petitioner has further alleged that those who were carrying on the agitation of prevention of cow-slaughter in the month of December 1966 and January 1967, propagated that the Congress party and the persons belonging to the said party including its candidates did not believe in the prevention of cow-slaughter and that they were encouraging cow-slaughter. They used to propagate that those belonging to the congress were sinful persons inasmuch as they were responsible for thousands of cows being slaughtered every day. According to the petitioner, because of this propaganda in the said constituency, it had affected adversely the election prospects of the respondent No. 2 and brightened the election prospects of

respondent No. 1. Under the Order dated 25th September 1967 granting amendment, the petitioner has given particulars of some more meetings wherein Shambhu Maharaj addressed voters in several villages. Details of the number of persons attending are also stated. It is alleged that on account of the propaganda and on account of the threats to the voters that they would become objects of divine displeasure or spiritual censure if they voted for respondent No. 2, he had lost over 25,000 votes and that the respondent No. 1 benefitted to the extent. On this ground it was averred that under the circumstances, respondent No. 2 is entitled to be declared elected. By the above stated amendment, the petitioner also brought in the petition instances and particulars of speeches at various places of one Mohananand Maharaj and others but ultimately no reliance is placed thereon by the petitioner. On these allegations made, the petitioner prayed: (a) that it may be declared that the election of the respondent No. 1 from the Bansakantha Parliamentary Constituency to the House of the People is void;

(b) that it may be declared that the respondent No. 2 has been duly elected to the House of the People from the said Banaskantha Parliamentary Constituency; (c) that costs of the Petition be awarded to the petitioner.

The respondent No. 1 in reply to the charge of corrupt practice of undue influence of inducing or attempting to induce the electors to believe that they will be rendered an object of divine displeasure or spiritual censure, denied specifically all and every allegation as stated in para 14 including the sub-*paras* thereof save and except the facts specifically admitted by him. He denied that he, his agents and other persons with the consent of the returned candidate or his election agents had directly or indirectly interfered or attempted to interfere with the free exercise of the electoral rights in as much as they induced the voters or attempted to induce the voters to believe that they will be rendered objects of divine displeasure or spiritual censure. He also denied the allegations, contentions and submissions made in the instance cited in support of the allegations. As regards the allegations in respect of the speeches made by Shambhu Maharaj, the respondent No. 1 denied that Shambhu Maharaj is a well-known saint and Kirtan-Kesari and a social worker of Gujarat. He also denied meetings having been held for supporting his candidature wherein Shambhu Maharaj had spoken and that such meetings were held with the consent of respondent No. 1 or his election agent. He also denied the correctness of the truth of the details regarding the place and dates of holding the meetings of Shambhu Maharaj. He denied having attended any meeting of Shambhu Maharaj. He also denied that his election agent had attended any of the meetings of Shambhu Maharaj. He denied that the basis of cow slaughter considered as a sin committed by the congressmen including congress candidates was a line of arguments of Shambhu Maharaj. It is also denied that Shambhu Maharaj appealed to the religious feelings of the people in the audience and exhorted them not to vote for the congress party candidates including the second respondent. It is further denied that the alleged appeal, exhortation and urging as aforesaid of the said Shambhu Maharaj amounted to inducing or attempting to induce the electors to believe that the electors would be rendered an object of divine displeasure or spiritual censure. He further submitted that the allegation regarding the meeting of Shambhu Maharaj and the line of argument of his speeches was vague and did not comply with the requirements of section 81(3) of the Act. Then as regards the allegations made in para 18 of the petition, respondent No. 1 has stated that it was not true that the result of the election was materially affected in so far as it concerned the returned candidate by the alleged corrupt practice committed in the interest of the returned candidate. He denied the allegation made in respect of Shri Gupta and the activity of Sarvodaya Gau Raksha Samiti. He denied that any propaganda was made as alleged, in the constituency by those who were carrying on agitation of the prevention of cow-slaughter to the effect that the Congress party and the persons belonging to the party including its candidates did not believe in the prevention of cow-slaughter. He denied that any such propaganda was made with his knowledge and consent of his or of his election agents. He also denied that respondent No. 2 lost the election by a small margin of 4407 votes on account of the alleged propaganda in the name of the religion and the cow.

Over and above this, the respondent No. 1 also raised a contention that the petition is not in accordance with sections 81, 82 and 83 of the Act and therefore not maintainable. It is also contended that the petitioner had not verified full particulars of the corrupt practice alleged and that the affidavit in support of the allegations of corrupt practices is not in accordance with law.

After the petition was amended, for the first time, the respondent No. 1 put in his additional written statement and so far as the material allegations are concerned, he has denied

the allegations made in para 18A(i). He denied that the meetings as stated in the said para were held at the places mentioned therein and the persons alleged to have attended such meetings numbered as stated therein. He also denied that on account of appeal in the name of religion and on account of the threats of divine displeasure and spiritual censure to voters, the respondent No. 2 had lost about 25,000 votes. As regards the allegation in para 18A(ii), respondent No. 1 denied that the alleged meeting at was held and that Shambhu Maharaj had addressed the said meeting. He also denied that Mohananand Maharaj had addressed the said meeting.

After the last amendment was allowed on the 7th of March 1968 and the petition was amended, the respondent No. 1 put in his further written statement to the amended petition *inter alia* stating that for the purpose of deciding as to whether Shambhu Maharaj by his alleged speeches induced or attempted to induce his audience to believe that they will become or will be rendered an object of divine displeasure or spiritual censure, portions of his alleged speeches or extracts of his alleged speeches cannot be picked up and considered *do hors* their context and the entire speech, if it is proved to have been actually made by Shambhu Maharaj, should be read as a whole in order to decide as to whether Shambhu Maharaj had induced the alleged belief in his audience. He further submitted that it should be taken into consideration that the fast of Shankaracharya and others on their insistence on a total ban of cow-slaughter had become shot political issue on the eve of the election and it had caused public agitation at various places. Shambhu Maharaj was also a probable candidate at the election and he had decided not to contest ultimately. During the election period, when the election tempo was very high, on the political issues, if there were exaggerations, metaphors and strong language resorted to by the speaker and if incidentally the speaker had introduced considerations of religion, allowance should be made for the same and those considerations of religion, if at all introduced by the speaker in his speech should be considered in the light of the relevant political controversy. It is denied that in speeches were made at Iqbalgadh, Laxmipura, Amirgadh, Vav, Bhabhar and Tharad by Shambhu Maharaj as have been reproduced. He further denied that Shambhu Maharaj made any such speeches with his consent or with the consent of his election agent. A dispute has also been raised as regards the correctness of the translation made by the petitioner of the extracts from the alleged speeches of Shambhu Maharaj at several meetings and which are reproduced in the amended petition. It has also been stated that Shambhu Maharaj is not shown or even alleged by the petitioner to possess any authority from Shankaracharya to make any statement for and on behalf of or in the name of Shankaracharya. It has also not been shown that Shankaracharya had in fact conveyed any message or mandate to the audience through Shambhu Maharaj at each of the places where Shambhu Maharaj is alleged to have spoken. It is further stated that unless Shankaracharya had himself given any message or mandate to Hindus or unless the person who speaks in the name of Shankaracharya or purports to convey any message or mandate from Shankaracharya, discloses any due authority from Shankaracharya to the audience, the alleged message or mandate of Shankaracharya as conveyed by the speaker cannot cause any effect on the voters. The said statement is more or less argumentative and therefore I do not find it necessary to refer to all the statements made therein as they shall be considered as parts of the submissions made by the learned Advocate while considering the respective issues.

The issues arising from the pleadings and my findings thereon are as follows:—

| Issues | Findings. |
|--|---|
| (1) Whether respondent No. 1 proves that the petition is not in accordance with the provisions of Secs. 81, 82 or 83 of the Representation of the People Act, 1951? If so, whether the petition is maintainable? | First part in the negative. Second part in the affirmative. |
| (2) Whether respondent No. 1 proves that the petitioner has not verified full particulars of the corrupt practice alleged by him? If so, what is the result? | In the negative. Second part does not survive. |
| (3) Whether respondent No. 1 proves that the affidavit in support of the allegations of corrupt practices is not in accordance with law? If so, what is the result? | In the negative. Second part does not survive. |
| (4) Whether the allegations regarding the corrupt practice committed by the persons other than the Election Agent are liable to be struck off? Whether the petitioner can be permitted to lead evidence regarding corrupt practice committed by persons other than the returned candidate or his Election Agent? | 1st Part : In the negative. 2nd Part : In the affirmative. |

| <i>Issues</i> | <i>Findings</i> |
|--|---|
| (5) Whether the petitioner proves that the first respondent incurred or authorised expenditure in contravention of S. 77 of the Representation of the People Act, 1951 ? | Not pressed. |
| (6) Whether the petitioner proves that any person named in the petition induce or attempted to induce any elector to believe that he or any other person in whom he was interested would become the object of divinedispleasure or spiritual censure ? If so, whether the said corrupt practice was committed by the first respondent or by his Election Agent or with the consent of the first respondent or his Election Agent ? | 1st part : In the affirmative with regard to Shambhu Maharaj only. IInd part : Said corrupt practice was committed with the consent of the Election Agent of Respondent No. 1. |
| (7) Whether the petitioner proves that any person named in the petition appealed to the voters to vote for or refrain from voting for any person on the ground of use of or appeal to religious symbol and that such appeal was for furtherance of the prospects of the election of the first respondent ? Whether the said corrupt practice was committed by the first respondent or by his election agent or by any other person with the consent of the first respondent or his election agent ? (old issue was substituted by this issue). | In the negative. |
| (8) Whether the petitioner proves that any person named in the petition threatened any elector or any person in whom the elector was interested with injury of any kind as alleged in the petitioner ? If so, whether such corrupt practice was committed by the first respondent or his election agent or by any other person with the consent of the first respondent or his Election Agent ? | Not pressed. |
| (9) Whether the petitioner proves that any person named in the petition used any vehicle for the free conveyance of any electors to and from any polling stations ? Whether such vehicle was hired or procured by the first respondent or his election agent or by any other person with the consent of the first respondent or his Election Agent ? | Not pressed. |
| (10) What relief, if any, the petitioner is entitled to ? | As per order. |

When the issues were framed by Diwan J. Mr. Vakharia, the learned Advocate for the petitioner had stated that he did not want to press the issue regarding recount on any of the grounds mentioned in section 100(1)(d)(iii) and also the ground under section 123(7), though averments regarding these grounds were set out in the petition.

At the time when the matter came for hearing before me and after three witnesses were examined by the petitioner, on the first date when evidence was being recorded, Mr. Vakharia stated that the petitioner did not want to press a part of the grounds based on incurring of expenses by respondent No. 1 in excess of the prescribed amount. It was stated that grounds in para 11(C) read with para 11(AA) was not pressed that is to say the expenditure alleged to have been made after holding meetings was not pressed. Similarly it was stated that the petitioner did not want to press expenses mentioned in para 11(C) (v) in respect of the processions. Similarly the ground of allegation in para 11(H) was not pressed which was also expenditure alleged to have been made after processions. It was further stated that allegations in para 12(a) and (b) as regards gifts having been given were pressed. Then it was also stated that the petitioner did not want to press his allegations made in para 17 of the petition. This ground was given up earlier as stated above. Similarly it was reiterated that allegations in para 19 were also not pressed which he had already given up at the stage of framing issues.

After the evidence of about 16 witnesses was recorded, on the 5th of March 1968 Mr. Vakharia on behalf of the petitioner again informed the Court that the petitioner was not pressing issue No. 5 as a whole. Similarly he declared that issues Nos. 8 and 9 were also not pressed. As regards issues Nos. 6 and 7 it was stated that issue No. 6 will be pressed only so far as it concerned the speeches of Shambhu Maharaj and the allegations in respect of other speakers were not pressed. Similarly with regard to issue No. 7 also it was declared that the petitioner was not pressing the issue except in the case of the speeches of Shambhu Maharaj.

The above discussion would show that issues Nos. 5, 7, 8 and 9 do not survive for consideration as they are not pressed before me ultimately. The burden of proof of issue

Nos. 1, 2, 3 and 4 is on respondent No. 1. They were not given up though questioned at the stage when the petitioner gave up certain part of his case. But no attempt was made to substantiate either of these issues at any stage and the learned Advocate for the respondent No. 1 has made no submissions before me on these issues. Therefore they also do not remain to be considered. Therefore, the only issue that requires to be considered and decided is issue No. 6 so far as it concerned the speeches of Shambhu Maharaj. More precisely put, the only points that now remains for determination are: (1) Whether any of the speeches or part thereof alleged to have been made by Shambhu Maharaj and which are Exs. R-1 to R-6 were made by Shambhu Maharaj and if so whether they amount to corrupt practice of undue influence falling under section 123(2) proviso (a)(ii) of the Act? (2) If so whether it could be said that it was committed with the consent of respondent No. 1 or his election agent Punambhai Patel.

The evidence relied upon by the petitioner to discharge the burden of proof of the corrupt practice alleged, broadly divides itself into two parts viz., (i) the documentary evidence mostly consisting of the reports made by witness Police Constable Barot of the speeches made by Shambhu Maharaj. These have of course to be read with the oral evidence of witness Barot and the supporting evidence of witness P.S.I. Pandha; (ii) the oral evidence of witnesses who claim to have attended the meetings of Shambhu Maharaj at various places. I may at once say that the oral evidence of other witnesses has not been relied upon by the petitioner to prove the contents of the speeches but is relied upon *inter alia* for proving the facts of Shambhu Maharaj having made speeches at those respective places where the witnesses themselves claim to have attended the fact of the status of Shambhu Maharaj etc. It will therefore be convenient to deal with this oral evidence later.

L.I.B. Sub-Inspector Pandya established that Shambhu Maharaj had addressed meetings in Banaskantha Parliamentary constituency on the 26th of January 1967, 8th of February and 9th of February 1967. On the 26th of January 1967, Shambhu Maharaj had addressed the meetings at Palanpur, Thara, Deesa, and Radhanpur. He conceded that for those meetings, he had made no special arrangement for taking down the notes of the speeches of Shambhu Maharaj. On the 8th of February 1967 Shambhu Maharaj had addressed meetings at Iqbalgadh, Amirgadh and Laxmipura. Laxmipura is the suburb of Palanpur. For these meetings he had made arrangement to have reports taken by the shorthand writer witness Barot. He himself also had attended these meetings. He deposed that these shorthand reporter had taken notes of the speeches in shorthand and then he had prepared the transcript thereof and submitted them to him. The shorthand notes were retained by the reporter. The witness produced the reports submitted to him. As regards the 9th of February 1967 the witness said that Shambhu Maharaj had addressed meetings at Tharad, Vav and Bhabhar. Shorthand notes were taken by the same shorthand reporter and transcripts were submitted to him. I do not think it necessary to enter into the details of the cross-examination of this witness because there has been no attempt on the part of the respondent No. 1 by his counsel to challenge the veracity of the fact of reports having been taken by constable Barot which ultimately is the most important fact to be considered in this case and on which reliance has been placed by the petitioner. True it is that at the stage of the cross-examination, some effort was made to shake the evidence of this witness. But even then I do not find anything in the cross-examination which would make me believe that what the witness had come to say was not the truth.

Witness No. 13 Chandrakant Barot has deposed that he is a shorthand reporter in the police department and he was in the office of the D.I.G. C.I.D. in February 1968. He was instructed to go to Palanpur and report himself to the D.S.P., Palanpur. He was ultimately asked to contact L.I.B. Police Sub-Inspector Pandya and he was then instructed that he will have to go to villages for covering the meetings of Shambhu Maharaj. He deposed that on the 8th of February 1967 he had first gone to Iqbalgadh, taken shorthand report of the speech made by Shambhu Maharaj, then to Amirgarh and lastly to Laxmipura where also he had taken the reports in shorthand. He produced notebooks in which he had taken the shorthand reports. He deposed that from these shorthand notes that he had made, he had prepared the transcripts to be submitted to the higher authorities. He had got to transcripts typed by another person. He had got these typed in his presence by sitting near the typist and dictating from the shorthand notes directly to the typist. It is to be noted that at this stage the witness was asked to read out the report of Iqbalgadh made from his shorthand notes and he almost read half-way through in Court and while he was reading the transcript was being checked and it was found that word for word the typed report compared correctly with the shorthand notes about which a note has been made in his evidence. The witness then deposed that he had got typed the transcript word for word from notes so far the speech of Shambhu Maharaj was concerned. The headings in the typewritten transcript shown are also there in the shorthand note book. The witness has further deposed that he had taken down

those shorthand notes of what was spoken in the meeting. It is found that so far the speech of Punambhai Fulabhai Patel, the election agent of respondent No. 1 is concerned, the witness had taken down the speech made by him in the shorthand note book but in the typewritten report, only a reference in short had been made to that effect. The witness further deposed that in the typewritten report also the facts stated are correct and it contains what was actually stated by Shambhu Maharaj in the respective meetings. Then he explained that in the column of speakers at the head of the report, he had only mentioned the names of those who spoke in the meetings and had not noted the names of prominent persons also who were present. But later on the witness has said that he also used to note the names of the prominent persons if he was known to him. The witness also deposed the same way as regards the meetings at Vav, Tharad and Bhabhar on the 9th of February 1967. As regards the meetings at Vav, the witness said that he had taken down the report of that meeting in long hand himself from the shorthand notes and had sent it to the D.S.P., Palanpur by post. The transcripts of the reports of the two other meetings were got typed in the same manner as he had done in respect of the meetings of the 8th. Whatever has been stated in these reports was actually stated by Shambhu Maharaj. In cross-examination the witness stated that over and above the above stated meetings, his shorthand note book also contained the reports of the speeches at Juna Deesa and Chandisar where Shambhu Maharaj had spoken on the 9th of February. The reports of these meetings were also forwarded to the higher authorities. He was also present at village Deodar but at that place, Shambhu Maharaj had not made any speech. He did not know whether at Gadh he had made any speech or not because he had not gone to Gadh. In cross-examination the witness said that he had taken shorthand notes of all the speeches of Shambhu Maharaj word for word. I am again not trying to enter into the discussion of the evidence of this witness in any details of the cross-examination because I find that the witness has not at all been shaken in cross-examination. But apart from that it is material to note that no attempt has been made and very rightly on behalf of the first respondent to challenge before me the veracity of the evidence of either P.S.I. Pandya or L.I.B. constable Barot. On the contrary it was the submission of the learned Advocate for the respondent No. 1 at the time when the amendment application was argued that not only respondent No. 1 did not challenge the veracity of these witnesses, nor the fact that the reports produced by witness Barot but on the contrary so far as witness Barot is concerned, there was a positive effort made by him to establish that the shorthand notes that he had taken of the respective speeches of Shambhu Maharaj and their transcripts were genuine, reliable documentary evidence and that the speeches were taken down by the witness in shorthand word for word uttered by Shambhu Maharaj and that the transcripts were also correctly made. This last aspect of the submission on behalf of respondent No. 1 that there was no positive effort made on his behalf to establish these facts, I have not accepted in the order passed by me allowing the amendment for reasons given therein but the fact remains that there is no doubt whatever that this evidence is entirely reliable and that the transcripts Exts. B-1 to B-6 of the shorthand notes made by witness Barot are word for word faithful reproduction of the speeches of Shambhu Maharaj made at respective places. Mr. Nanavaty even at the stage of final arguments fairly did not dispute these facts.

As observed above, the only kind of corrupt practice which the petitioner has alleged and has to establish is the one falling within the four corners of proviso (a) (11) of section 123(2) of the Act which is as follows:—

“123. *Corrupt practice.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

- (1) * * *
- (2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right—

Provided that—

- (a) Without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

- (i) * * *
- (ii) induce or attempts to induce a candidate or any elector to believe that he, or any person in whom he is interested, will become or will be rendered an

object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

| | | | | | | | | |
|------|---|---|---|---|---|---|---|---|
| (b) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (3A) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |
| (5) | * | * | * | * | * | * | * | * |
| (6) | * | * | * | * | * | * | * | * |
| (7) | * | * | * | * | * | * | * | * |

The first part of sub-section (2) provides that undue influence will be one of the corrupt practices and is also laid down what will be considered to be undue influence for the purposes of the Act. It lays down that any direct or indirect interference or an attempt to interfere by a candidate or his election agent or any one else with the consent of the candidate or his election agent, with the free exercise of the right to vote or refrain from voting for a candidate will amount undue influence. Then the proviso is added by way of explanation and not for the purpose of carrying out something from the main provision. The effect of the proviso (a) (ii) is that if a candidate, his election agent or any one else with his consent or the consent of his election agent induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become so will be rendered an object of divine displeasure or spiritual censure, shall be deemed to commit the corrupt practice of undue influence as defined by the main part of sub-section (2).

Mr. Nanavaty first raised the question of the construction of the proviso (a) (ii) of section 123(2). He submitted that in the construction of this provision, the distinction between the provisions of the main part of sub-section (2) and the old sub-section (3) must be kept in mind as a background. Sub-section (2) main part deals with the vice of interference with the free exercise of the electoral right and that can arise in a variety of ways. Sub-section (3) before the present amendment prohibited mere systematic appeal *inter alia* on the ground of religion but proviso (a) (i) strikes at what is known as temporal intimidation while proviso (a)(ii) deals with what is known as spiritual intimidation. Argued Mr. Nanavaty that therefore in the cases falling under the old sub-section (3) and proviso (a)(i) mere utterance of words appealing to religious sentiments provided it was a systematic appeal or threatening any candidate or voters would amount to corrupt practice but it is not so in the cases falling within proviso (a) (ii). In proviso (a)(ii) the Legislature has used the words "induces or attempts to induce an candidate or an elector to believe." The words "induce" and "to believe" are significant and they indicate that the person doing the act or uttering the words must be so situated qua the audience that he must be in a position to generate the impugned belief and mere utterance of words by any one to any one else cannot come within the mischief. Mr. Nanavaty then put a question to himself as to who then must have been contemplated by the Legislature who would be able to generate such a belief. He answered by submitting that as this proviso (a) (ii) contemplates the specific undue influence of spiritual threat only, the person uttering the words must be a person who is in a position to spiritually influence his audience and that too in a position to unduly influence so as to leave no chance to the electors to vote as they liked by inducing the belief that they shall be objects of divine displeasure or spiritual censure. Mr. Nanavaty culminated his argument by advancing a proposition that the act or utterances made can come within the mischief of proviso (a) (ii) only when the act is done or words are uttered either (i) by a religious head believed to possess some divine power, or (ii) by a person though not a religious head of that character but is a person wellversed in religion and who has quoted some religious books acceptable to the audience as authority in support of the impugned utterances which are alleged to induce the belief of spiritual threats. In support of this submission, Mr. Nanavaty placed reliance on some decisions of Election Tribunals and adopted the reasoning as a part of his argument and also relied upon the decisions of some Courts. I shall deal with them a little later.

I am unable to accept this narrow construction canvassed for on behalf of respondent No. 1. It is a construction which would, to my mind, frustrate the very object of the provision. It is clear from the language used that it contemplates likelihood of the commission of this corrupt practice of undue influence by a candidate or his election agent. If the construction suggested were to be accepted, it would mean that a candidate

or his election agent can never commit this kind of corrupt practice unless he is a person who is recognised as a person possessing some divine powers or authority or is a person who is known to be well-versed in religions and he in support of what he says must be able to quote from religious books acknowledged by the audience to whom he is addressing as authoritative books on their religion. To accept the construction canvassed for, one will have to assume that under no circumstances a layman can ever induce a belief in a candidate or elector that he or they shall become or be rendered objects of divine displeasure or spiritual censure. To my mind, there is no warrant in the language used to make such an absolute assumption. To me it appears that it would be highly fallacious to make such a presumption. True it is that the words "to induce" and "to believe" must be given their due weight and it would be correct to say that anything said which cannot induce such a belief cannot amount to this specific corrupt practice and it will always be a question of fact whether in a given case the words uttered or writing published by an individual before the electors is or is not such as to induce such a belief. It is in the nature of things that the facts as to who uttered the words or published the writing the contents of such utterance or publication and before whom they are uttered or published are relevant factors to be taken into account in determining in each case as to whether such a person could induce or attempt to induce such a belief. It may be that in determining the question whether such a belief has been generated or not, the Court would more easily be persuaded to hold in the affirmative of the speaker or the publisher is a savant or a person of some status concerning a given religion. In each case, the court has to judge as a question of fact on the evidence before it whether the impugned act amounts to inducing or attempting to induce the belief in the electors that they shall be rendered objects of divine displeasure or spiritual censure and in doing so the personality of the speaker and the sensitiveness of the audience in respect of religious sentiments are relevant factors to be taken into consideration. But that is quite different from saying that the speaker must have some acknowledged status and belief to have some divine authority in the hierarchy of the religion to which the electors belong, or must be a savant able to quote chapter and verse from any religious books accepted as authority on religion by the audience. While construing this proviso (a) (ii) it is very necessary to keep in mind the fact that it deals with a specie of undue influence as defined in the first part of sub-section (2) of section 123 of the Act and therefore the nature of the mischief intended to be forestalled by that provision has an impact on the (a) (ii). The mischief which sub-sec. (2) is intended to prevent is the act which will preclude the elector from electing a candidate of his own choice. Any such act done will fall within the vice of sub-section (2) and any act which amounts to a spiritual influence that has the tendency to prevent free choice of a candidate would come within the mischief of the proviso (a) (ii). It is now well-settled that the election law in India lays stress on the prevention of use of influence that has the tendency to interfere with the free choice of a candidate by the electorate and does not emphasize the individual aspect of the exercise of such influence. This is very explicitly brought out in the decision of the Supreme Court in *Ram Dial v. Sant Lal* A.I.R. 1959 S.C. 855. Where after discussing similar provisions in the English Law, the learned Judges have observed that the Indian Law on the other hand does not emphasize the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause. What is material under the Indian Law, is not the actual effect produced by the doing of such acts as are calculated to interfere with the free exercise of any electoral right.

Mr. Nanavaty's submission included the proposition that the spiritual appeal must be of such a character that it leaves no choice whatever to the electors to choose their candidate according to their liking. For this, reliance was placed on the following passage in *Ram Dial v. Sant Lal* A.I.R. 1959 S.C. 855 (supra):—

"... But it will amount to an abuse of his great influence if the words he uses in a document, or utters in his speeches, leave no choice to the persons addressed by him, in the exercise of their electoral rights."

This contention was raised in the case of *Lalsing Rehvar v. Vallabdas* VII G.L.R. 753 and the same passage was relied upon by Mr. Nanavaty himself on behalf of the respondent. While dealing with the said Supreme Court decision, it has been observed that Mr. Nanavaty relied upon the case of *Ram Dial v. Sant Lal* and other (supra). That was a case under proviso (a) (ii) to section 123(2) of the Act. It was a case in which a religious leader had given a mandate that the voters should vote in favour of a particular candidate. In regard to the facts of that particular case, their Lordships of the Supreme Court have made the above stated observations. That was a decision on the facts of that particular case and it did not represent the ratio of the case. The ratio of the Supreme Court decision was that under the Indian Law the emphasis is on the use of influence that has the tendency to bring about the result contemplated in clause

(a)(ii). What is material under the Indian law, is that the actual effect but the doing of such acts as are calculated to interfere with free exercise of the electoral right. In the said case, this High Court held that what was hit by sub-section (2) of section 123 was the effect which the impugned act has on the free exercise of the electoral right. I will rest content at this stage referring to the said observations and adopting them. I may however mention here that it was contended on behalf of the petitioner that even in the present case the nature of the speeches was such that it left no free choice to the voters to elect the candidate according to their liking. I will deal with this aspect later.

Now dealing with the other decisions on which Mr. Nanavaty relied for the narrow construction canvassed for by him, the first decision relied upon is of the Election Tribunal being Case No. 2 of 1938 of *Mohammed Zakaria v. Mohammed Sadiq of Amritsar City* (Mohammadan) Constituency reported in Vol. II of Indian Election Cases by N.S. Doabia P. 160. One of the points that arose ofr decision in the said case was whether certain words uttered in a speech by M. Zaffar Ali Khan who was the agent of the respondent in that case committed the corrupt practice of undue influence. The report shows that the Commission was concerned with the Corrupt Practices Order 1936, and that the provision regarding corrupt practice of undue influence is in *pari materia* with the present provisions of section 123(2) and also proviso (a) (ii). The petitioner in the said case contended that M. Zaffar Ali by making the impugned appeal to the voters restricted their choice to only one of the candidates under pain of spiritual penalties and even otherwise and thereby interfered with the free exercise of their right to vote. On the other hand, on behalf of the respondent it was *inter alia* urged that the threat or an element of compulsion was an essential ingredient of the corrupt practice of undue influence and contended that it was not even alleged that M. Zaffar Ali Khan compelled his audience to vote for any particular candidate. As regards this contention, the Tribunal however held that they could not find any basis in the definition of "undue influence" for the proposition that unless M. Zaffar Ali Khan threatened or compelled the voters to vote in a particular manner, the offence of "undue influence" was not complete. The definition of 'undue influence' was very wide in its terms and included four different forms of interference *viz.*, direct interference, indirect interference, direct attempt to interfere and indirect attempt to interfere and it was nowhere laid down that such interference or attempt to interfere should be by the method of compulsion. Evidently the offence included such interference or attempt to interfere by any method and the rule definitely included the method of inducement wherein there may be no compulsion at all. These observations do not in any way support the submission made on behalf of the respondent No. 1 but the Tribunal made the following further observations and Mr. Nanavaty particularly relied upon them:

"Although we are prepared to concede that the inducement must be of such a powerful type as would leave no free will to the voter in the exercise of his choice. There would of course, be in such a case mental compulsion in a sense but it is not necessary that there should be physical compulsion or that a threat must be actually held out by the person who interferes or attempts to interfere."

This aspect of the matter, I have already dealt with by referring to the decision in VII Guj.L.R.P.753 (*supra*). But apart from that, I shall later point out that if this principle has also to be followed, it cannot help the respondent No. 1. In the case before the Tribunal, an effort similar to the one made by Mr. Nanavaty was made to urge that spiritual undue influence can be exercised by a Pir *viz.*, a spiritual leader only and that as M. Zaffar Ali Khan was not a Pir but a mere lay man, the charge of the corrupt practice of undue influence could not stand against him. The Tribunal however negatived his submission and observed that the definition as reproduced, does not contain anything to support the above contention but it was true that whereas in the case of a Pir he has the authority of spiritual leadership at his back and what he therefore said was bound to carry conviction to his followers, an inducement held out by a layman will be considered sufficiently strong to interfere with the exercise of free will only if the community concerned has great regard for his opinions, or if what he says, has the sanction of some religious book whose authority was admitted by the community in question. Mr. Nanavaty also drew attention to the following observations:—

"We agree that one can appeal to religion in a religious constituency and there is certainly no objection in saying or issuing a manifesto to the effect that a certain candidate's election will be prejudicial to the interests of Muslims, but the limit is transgressed, if one attempts to introduce the idea of suggestion that voting in a particular manner will be sinful, and provided the speakers either exercises considerable influence among his co-religionists, or if what he says has the support of the Holy Quran".

The latter part of the observations where the Tribunal expressed its view as to when the limit will be transgressed, it certainly did not mean to lay down any absolute general proposition that the limit would be transgressed only if the situation as stated by it obtains. The Tribunal only held that if such facts exist, the limit will be certainly transgressed. It did not lay down that in no other circumstances the limit can be considered to have been transgressed.

The next decision of the Tribunal to which my attention was drawn on behalf of the respondent No. 1 is: *Jyotsna Chandra v. Mehrabali* III Election Law Reporter P. 488. In the said case, the Tribunal observed that they did not find any distinct evidence in proof of the fact that the persons said to have addressed the above meetings were really persons whose words carried considerable weight with the people thus addressed and in matters of religion. Then referring to the Amritsar City H. P. Constituency, 1937; *Md. Zakaria v. Sheikh Md. Sadiq* and case the Tribunal observed that though it has been observed in the said case upon which case petitioners have relied, that spiritual undue influence can be exercised among the Muslims by layman such as Maulanas and such others without their being Pirs (that is, spiritual leaders), the men must be proved to be persons for whose opinion on matters of religion, the community had great regard. The evidence on this last point has not here been quite satisfactory. Of course, an appeal to the voters such as these, in the name of Quoran as proved, would have been held in the nature of mental coercion if they had been proved to have emanated from persons whose opinion in matters of religion carried considerable influence with them, on which last point, the evidence has not been quite satisfactory. As I have discussed here above, in each case the Court will have to determine whether under the facts of the case the undue influence alleged is proved or not, and the position of the speaker qua the audience and the contents of the speeches are relevant facts to be considered. But I am unable to agree with the view that under no circumstances a lay person can induce the belief contemplated by proviso (a) (ii). In the view that I take and which I shall further discuss a little later, it is possible for a person held in great respect by the voters of a given locality not for his knowledge in matters of religion but otherwise and if he purports to convey the message or mandate of an acknowledged religious leader which contains some spiritual intimidation, the offence of corrupt practice is contemplated by sub-section (2) proviso (a) (ii) would be committed.

I will now deal with the Supreme Court decisions which were referred before me by the parties. In *Shubnath v. Ram Narain* A.I.R. 1960 S. C. : 148 a leaflet was addressed to the electorate mainly consisting of Adibasis. It was published by the party sponsoring one of the candidates, which party was mainly supported by Adibasis. Cock was the official symbol of the party and therefore of the candidates supported by it. The leaflet contained an appeal in verse form and it is made to appear as if it was what the cock itself was saying to the electorate by ending the verse with the words: "Your only cock". The ground taken to challenge the election was that it amounted to corrupt practice under old sub-section (3) of section 123 of the Act which prohibited systematic appeal to vote or refrain from voting *inter alia* on the ground of religion for the furtherance of the prospects of that candidate's election. In the majority judgment (Sabha Rao J. dissenting) it was observed that the leaflet was largely concerned a Cock. It was said that the leaflet by referring to the cock appealed to the religious sentiments of the Adibasis. It was not in dispute that cocks were very frequently offered as sacrifices by the Adibasis to the deities. The learned Judges then examined the contents of the leaflet and said that it was clear that it was sent to be an appeal to the electorate. There was no doubt that the electorate appealed to was primarily that part of it which consisted of the Adibasis. It further seemed to them that the appeal was made in the name of the cock and it ends "Yours only cock". It uses the word 'me' and 'I' at several places and they clearly refer to the cock. It was clear therefore that the leaflet purported to be an appeal by the cock stating that it served the community even at the cost of its life and that in exchange for these services "chara" that is, food in the shape of vote should be given to it which could only mean in the box with the cock symbol that is to the Jharkhand party candidates including the appellant. Then referring to the religious ceremonies and the place of cock in the ceremonies, it was observed that it was beyond doubt that by referring to the sacrifice of the cock the obtaining of the pleasure of the deities was sought to be conveyed. When the cock in the leaflet said 'give chara in the shape of vote', what it said in substance was that the giving of such votes would result in the deities being pleased. It was tried to be suggested on behalf of the respondent there in that case that all that was meant by the leaflet was that like the sacrificial cock the candidate, that is, the appellant was prepared to lay his life down for the good of the community. The learned Judges however negatived that suggestion and observed that they found no language in the leaflet to convey such a meaning. There was nothing to show that the sacrificial cock was being likened to the appellant. There was no reference whatsoever to the appellant in the leaflet. Proceeding further the

Court held that the sentence "do not forget me otherwise I tell, you sons of men will suffer eternal miseries" in the leaflet clearly invokes the wrath of the deities on the electorate in case they forget the cock that is forget to vote for the party of which it was the symbol, for vote was likened to the food which had to be given to the sacrificial cock and when the Gods were displeased, the cock did not take the food. Their Lordships came to the conclusion after the discussion that that was clearly an appeal on the ground of religion for the substance of it was that it would be an irreligious act not to vote for the party. There are other observations in the said case which are important to be noted. They have said, it may be that it would come within the kind of undue influence mentioned in section 123(2) (a) (ii) of the Act if practised on an individual elector. Then they have considered the fact that if this kind of appeal which they have set out were made systematically to a large section of the electors, it would come within section 123(3) of the Act. Then they have further observed that it would seem clear that an appeal that it would be a religious act to vote in a certain manner would be an appeal on grounds of religion. If so, it seemed clear that an appeal that a failure to vote in a certain manner would be against religion, would also be an appeal on grounds of religion. For these reasons, Their Lordships ultimately held that the view of the Courts below that the leaflet contained an appeal on grounds of religion was correct.

It is true that in the said case the Court was concerned with the allegation of corrupt practice under old sub-section (3). But what was important to note was that it was held that though the language may be metaphorical or parable may be used if the subject matter of the talk in substance is an appeal to religious sentiments and if the electorate is told that it would be irreligious to vote in favour of the other candidate, or not to vote in favour of a particular candidate, it would amount to an appeal on the ground of religion. It is also very important to note that the Supreme Court has observed after discussing the whole case that such an appeal would come within the kind of undue influence mentioned in section 123(2) proviso (a) (ii) also. Now these observations are by way of *abiter dictis* but all the same this lends support to the reasoning that I have adopted. From this decision, therefore, it would appear that though no religious head had published the pamphlet and it was published by the party supporting one of these candidates as it adopted this device which in substance was an act whereby religious sentiment of the electorate was played upon and a belief was induced that if the vote is not given to the candidate with the symbol of the cock, it will be an irreligious act or a sin implicit wherei nis the spiritual threat.

It would be even useful to have a look at the observations made at this stage wherein illustrations have been given by Subha Rao J. in his differing judgment wherein by giving those illustrations the learned Judge has given an idea as to the limit up to which an appeal can go to refer to the matters on religion. The learned Judge has observed that the section is not obviously intended to prevent appeals in picturesque or metaphorical language drawing analogies from mythology, religion or folklore. In his view when most of the voters are illiterate, the candidate or his agent can attract and enthuse the audience or drive home his points only by parables, similes or metaphors drawn particularly from religious lore which most of the people understand and appreciate. A distinction must, therefore, be drawn between canvassing on grounds of religion and seeking of votes in graphic or picturesque language with analogies from religious lore and then the learned Judge has given illustration to further clarify or specify his view and this part of his observations to my mind are indeed very instructive. The learned Judge has said to illustrate, a candidate may appeal to the electorate consisting of persons professing different religions, say Hindus, Mohammadans, Christians etc. to vote for him and say that he would sacrifice his life in the cause of his constituency just like Christ sacrificed his life to redeem the world. He may also say that like Rama, the virtuous, who killed Ravana, the rakshasa. The embodiment of evil, he would, if elected, put down corruption, nepotism and the like in Government. He may even say that he would sacrifice himself as a goat before Kali to bring happiness and prosperity to his constituency. All these similes are drawn from religion, but they do not embody an appeal, directly or indirectly, to vote for the candidate on grounds of religion. Now even if this view of the learned Judge is accepted, it clearly indicates the line which is expected to be drawn by the speaker in order to avoid falling within the vices of the corruption of undue influence as contemplated by section 123(2) and also under proviso (a) (ii). in the illustration given, it is easy to understand that the speaker or the candidate only tries to draw similes in order to emphasize the main theme of the political controversy or the points which were the policy of their party which if successful they would like to persue. I shall certainly keep this fact in mind when I go to consider the contents of the speeches with which I am concerned as to whether the speeches can be saved even on this principle. I find that these observations of the learned Judge are not even in conflict with the majority views in

the said judgment. As I have already referred to most of the reasoning of the majority judgment from which it is apparent that the effort on the part of the respondent to turn the impugned part of the pamphlet into only such a similes was not accepted by the majority judgment on facts and on the construction of the impugned part of the said pamphlet.

This also becomes obvious as I shall point out a little later that in an other judgment of the Supreme Court, these observations from the dissenting judgment have actually been drawn upon for the purposes of supporting the conclusions reached in that decision and I might as well immediately refer to that decision which is in *Ramanbhai v. Dabhi Ajitkumar* A.I.R. 1965 S.C. 669. In the said case, the question before the Court was whether leaflets bearing the symbol of the Star, the official symbol of the Swatantra Party, were published by a Swatantra Paksha candidate describing it as star "Dhruva" with the characteristics associated with that star can amount to the corrupt practice under amended sub-section (3) of section 123 of the Act, the object whereof is to prohibit the stirring up of religious sentiment by use or appeal to a religious symbol. This question was examined in two branches by the Court: Whether the symbol used has any special religious significance and whether its inscription on leaflets and pamphlets which were distributed amounts to the use of a religious symbol. On both counts the Court held in the negative. This case too had no direct bearing on the question before me but certain observations are very instructive. The learned Judges while discussing the question, referred to the passage in the dissenting judgment of Subba Rao J. to which I have made a reference. The observations are as follow:—

"We have quoted the learned Judge to point out that a reference to prophets of religions or to deities venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiment of the electorate. Something more has to be shown for this purpose as indeed, according to the majority of the Judges who decided the case, was established therein".

Then Mudholkar J. speaking for the Supreme Court in the later decision tries to give instances on his own to illustrate further the point. It is observed that if for instance, the illiterate, the orthodox or the fanatical electors are told that their religion would be in danger or they will suffer miseries or calamities unless they cast their vote for a particular candidate, that would be quite clearly an appeal to the religious sentiment of the people. Similarly if they are told that the wrath of God or of a deity will visit them if they do not exercise their franchise in a particular way or if they are told that they will receive the blessings of God or a deity if they vote in a particular way, that would be an appeal to the religious sentiment. Now these illustrations clearly point out when the speaker referring to matters religious, would transgress the line. This is the other side of the picture that has been depicted by the learned Judge. To my mind, therefore, these observations made giving illustrations are very material for the purpose of the matter on hand. Suffice it to say at this stage that if the electorate consisting of illiterate or orthodox Hindus or Hindus having ordinary religious sentiments are told that they will suffer calamities or miseries unless they give their votes for a particular candidate, that would be an appeal to their religious sentiment. I will have occasion to advert to it again a little later. Another principle reiterated by the Supreme Court in this decision is that the abention literature should neither be judged strictly nor taken literally.

In 1969 S.C. 855, to which I have already made a reference, was relied upon by Mr. Nanavaty also to show that their religious leader is not precluded from the right of canvassing. Indeed, no one can grudge the right of a religious leader to express his opinion regarding merits or demerits of the candidates and to canvass for such of them as he thinks deserves his support. He can use his influence in canvassing votes for him as any other voter can but then there are limitations too for such a religious leader. If he instead of doing limiting the propaganda in that direction, utters words or publishes any pamphlet which would excite religious sentiments and does not confine himself to merely incidental reference to religion as was illustrated by Subba Rao J. to which I have made a reference and makes the voters believe that if they were to vote for a particular candidate they will be rendered objects of divine displeasure or spiritual censure, then certainly he crosses his limits of his right as any other voter to canvass for the candidate of his choice and will be guilty of corrupt practice as contemplated by section 123(2) (a) (ii) of the Act. That is what the Supreme Court has actually held in the said case. On the said aspect, Mr. Nanavaty tried to distinguish the present case but I shall deal with it when I actually consider the impugned speeches of Shambhu Maharaj.

In the background of these legal principles it would now be convenient to deal with the facts of the present case and the question is whether any of the impugned speeches made

by Shambhu Maharaj or any part thereof read in context of the other parts of the respective speeches, has the vice of the tendency to bring about a belief in the electorate at the respective places that they shall be rendered objects of divine displeasure or spiritual censure. I now therefore turn to the speeches.

The mere fact of any corrupt practice committed by Shambhu Maharaj even if established cannot help the petitioner unless it is further established that he did so with the consent of the candidate or his election agent and as even the reports of witness Barot notes the presence of the election agent of respondent No. 1 Punambhai Patel only in the meetings at Iqbalgadh, Amirgadh and Vav Exs. B-1, B-3 and B-4, Mr. Daru, the learned Advocate for the petitioner relied upon these reports only to prove the contents and the nature of speeches by Shambhu Maharaj to establish the charge of corrupt practice alleged. In the beginning it was tried by Mr. Daru to say that the consent of either respondent No. 1 or his election agent must be held to be established so far as the other speeches are also concerned but ultimately he rightly confined to only these three speeches and did not urge that there was any reliable oral evidence to establish corrupt practice with reference to the other speeches.

It is now a well-settled principle that in construing election literature or impugned parts of speeches, the document or the speech must be read or construed as a whole and its purport and effect determined in a fair objective and reasonable manner. This was the submission of Mr. Nanavaty and Mr. Daru did not demur at it. The Supreme Court in *Kultar Singh v. Mukhtiar Singh* A.L.R. 1965 S. C. 141 has laid down that in reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors and the extravagance of expression in attacking one another, are all a part of the game; and so when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. But at the same time the Supreme Court has uttered a warning and said that in doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or pamphlet would be on the mind of the ordinary voter who attends such meetings and reads the pamphlets or hears the speeches. There is yet another principle also laid down and that is that topics like language or religion may be incidentally or indirectly touched by speakers in political meetings while discussing political issues which form the subject matter of controversy and care must be taken while deciding the question as to whether the impugned parts of the speech do amount to the corrupt practice or not and the matter should be considered in the light of relevant political controversy. Keeping in mind this general principle, I will now endeavour to examine the three speeches of Shambhu Maharaj. The verbatim reports whereof are Exs. B-1, B-3, and B-4.

In this connection, Mr. Nanavaty for respondent No. 1 urged that all the three speeches read as a whole consist only of a political propaganda with maladministration of the country by the Congress regime, ban on cow slaughter and its progeny and fast of Jagadguru which had also become a part of the political issue of the time and any reference to religion and religious and irreligious acts were merely indirect references and brought in to emphasize the political propaganda. The reference to the 'Adesh' that is command of Jagadguru is a creation of the speaker himself to impress the audience and carry conviction to them to accept his appeal. The passages regarding the command of Jagadguru and reference to natural calamities should not be read in isolation but should be read in conjunction with the theme of the main speech which was political. He submitted that if an examination of the reports of the speeches this is all that can be said about them, then certainly they cannot be the basis of the challenge to the election of respondent No. 1. I agree with him that if an examination of these reports, if that is the only construction that can be placed on the speeches, the petitioner cannot succeed. Keeping in mind this general submission of Mr. Nanavaty, I proceed now to deal with the three speeches one after the other.

The speech at Iqbalgadh, report whereof is Ex-B-1 was made on the 8th of February 1967 at 14.50 hours to 15.15 hours. The heading of the report shows that the meeting was called under the auspices of the Swatantra Party at Palanpur. It also shows that Shri Punambhai Fulabhai Patel was present and loudspeakers were used. Before noting down the speech by Shambhu Maharaj, a note is to be found that Shri Punambhai had explained the object of organising the meeting and requested the people to vote for the Swatantra Party and explained the manner in which the votes were to be given. The speech of Shambhu Maharaj opens with the remark to the effect that even the best of Government can give only means but cannot give happiness. A government may give

land for cultivation and crops may be grown therein but frost may fall. A thousand rupees may be given for purchase of ox but the ox may die. Then comes the first impugned passage, Its translation is as under:—

"But happiness is given only by God. When religious (duty) is followed, God shows compassion. But the Congress has annihilated religion (duty). Votes are claimed on the photo of oxen and living oxen are got slaughtered. In Ahmedabad alone ten thousand oxen are slaughtered in slaughter house. Before twenty years one could get a tin of oil at three rupees and twelve annas. Sugar was sold fourteen seers a rupee and ghee was sold one and three four seers a rupee. At that time the price of an ox was one hundred rupees. Today an ox is not available at four hundred rupees also. When an ox was cheap good cultivation could be done. And as religion (duty) was followed there used to be good fertility in land and there used to be good produce and so there was no dearth. It is said that the production has decreased and the population has increased and so there is dearth. But twenty Brahmins used to eat 'Ladus (sweets)' of one maund. Today one hundred and twenty Brahmins eat the said quantity of food. The capacity to eat is reduced and there would not be deficit even if the population is increased five times. But where there is wickedness, God will not be kind. However much schemes may be framed, tractors may be brought but we do not get fruit."

I may mention that under the order of the Court, official translation of the speeches are put on record but there is dispute as regards the correctness of the translation of certain words and sentences. Wherever it is material, I shall indicate this difference and my view as regards what is the correct translation. In this passage, the word 'Dharma' appears at two places. The official Translator has translated the word as 'religion' but has also put into brackets the word 'duty' indicating that it may mean duty. Mr. Nanavaty urges that the word should be so read. Now there can be no doubt that 'Dharma' may also mean duty in certain context. But having regard to the trend and tenor of the whole speech and the context in which it is used, in my view, here it cannot be interpreted as duty. I find it difficult particularly in the light of the fact that the word is used in context with this sentence: "But the Congress has annihilated religion (Dharma)". To my mind, it would be incongruous to translate it as duty.

Now in this opening part of the speech by Shambhu Maharaj it is obvious that he propounds the philosophy that to make the people happy or unhappy lies in the hands of God and not in the hands even of good government. But good would be good when religion is followed but Congress has annihilated religion. Then in the subsequent part of this impugned speech, the speaker mostly dwelt on permitting of slaughter of ox, the high price of necessities of life and criticised the Congress for using the symbol of the bullocks with yoke on, for canvassing votes for them and at the same time permitting slaughter of live bullocks. He said that Government may give tractors etc. and big schemes may be framed but all that will be useless for where there is irreligiosity, God will not be kind. In this passage the word 'Adharma' is translated as 'wickedness'. Mr. Nanavaty supports this translation but I think Mr. Daru is right when he urges that here too the appropriate translation would be 'irreligiosity'. But at the same time reading the passage as a whole, as such I agree with Mr. Nanavaty that it may not amount to any corrupt practice because it touches in the main area when it refers to permitting of the slaughter of ox, to happiness and unhappiness and religiousness and irreligiosity, the political controversy regarding total ban on cow slaughter and its progeny. It is an undisputed fact that at that time such a controversy was raging throughout India including this part of the country and that even Shankaracharya of Puri had gone on fast on that issue. It in substance, therefore, amounts to a criticism of the Congress and the Congress Government. But the thing to be noted at this stage is that it refers to the fact that where there is irreligiosity, God is displeased. By itself again it means nothing. We will have however to weigh its effect when the impact of the whole speech and when read in context with other impugned speeches is to be judged.

The speaker then criticised strongly the policy of the Congress Government and alleged that it has frittered away colossal amount of money in 20 years. Then appeals to vote for the Swatantra Paksha and its candidate respondent No. 1. The speaker warned the Sarpanchs, the Chairmen of the Co-operative Societies etc. who he alleged have been flitting and running after those in power, to serve their own selfish ends. Here again I agree with Mr. Nanavaty that this part of the speech only deals with the criticism of Congress Government.

Then comes the second impugned portion of the speech which is as follows:—

"They have not made our Jagadguru give up his fasts but they have insulted him. We have made him give up fasts. So do not be misled. I have come

here after undertaking journey of eight thousand miles. I move three hundred miles daily. I have seen that the Swatantra Party will come and the Swatantra Party has given me promise that it will form the Government and in its first session the slaughter of the progeny of cow that is cow, ox and calf will be stopped and the farmers will be exempted from land revenue. So I have thought that instead of sending cow-loving brothers to Jail by offering 'Satyagraha' the rest of sinful congress should be uprooted by making propaganda. The price of oil has risen to five rupees. The congress has created this position. A thing which can be produced in a country should be sold cheap. Those who did not have chappals in their foot have got bungalows and motors and still they are not satisfied and they have continued to suck blood. If we look from the point of democracy, forty crores of people demanded that the cow progeny slaughter should be stopped. Still if the Government does not believe it then it is wickedness. Cow is a form of goddess of earth and if a cow becomes angry she does not give a drop of milk. But if she is satisfied then milk begins to drop from her teats. Similarly if Goddess of earth is satisfied then alone there would be fertility and we can get more produce. But the Congress by getting votes in the name of oxen to has got living oxen slaughtered and followed wickedness and so there is no fertility. These two honest congress men should have kept symbol of a butcher and then they should have come forward to demand votes and see how many votes they get. This country is robbed for twenty years in the name of Gandhiji. To give vote to this congress is to make partnership in their work. If you support some one who wants to put up a watering place or to open a dispensary, you will get benediction. But if fire is to be set to a cradle of some one and support is given then a sin is committed. Similarly if a vote is given to congress it would mean that you give co-operation in slaughtering an ox. So you should not become a partner of sin."

In this passage also the word 'Adharma' is translated again as 'wickedness'. Here too, according to my view, the correct translation should be 'irreligiousness'. Then the word 'Beiman' is translated as 'two-honest'. This is obviously erroneous. The word means 'dishonest'. This passage too, in my mind, cannot fall within the view of the alleged corrupt practice. The substance of this part of the speech is strong criticism of Congress and the policy of Government and not-prohibiting the slaughter of cows and its progeny. It is true that he has said that to permit cow-slaughter is sinful and there of fore to vote for congress is to be party to the sinful act. But merely because this reference to religious aspect in passing is made while criticising the policy of the Government, would not by itself make it a corrupt practice. Once again what effect it can have on the overall impact when read with the subsequent part of the speech, I shall discuss a little later. But at this stage I do agree with the submission on behalf of respondent No. 1 that even the word 'Pap' that is 'sin', if this passage stands by itself, is to be read liberally and may be interpreted that it is not such a sin as would necessarily take them to hell so that it may imply aspiritual threat amounting to corrupt practice. Then follows the third impugned passage which is as follows:—

"Jagadguru observed fasts for 73 days but the Government did not take it into consideration. If a maulvi gives a command to Mahomadan brothers that if a person is a follower of Islam he should not vote at all for Congress, would any Mahomadan vote for Congress? Then your religious preceptor will command you that not a single vote should be given to Congress. Why this Manubhai in contesting elections? Not because he may get salary of rupees five hundreds. God is kind to him. If he has done good deeds in his previous birth, God shows kindness to him. You have got such man in this district. He feels that he should get these people free from sin. You give him co-operation. The Congress of Gandhiji was bound on truth and non-violence. But these people have done everything contrary to the same. Formerly when there was famine in the country in any particular year double quantity used to grow in the next year and there used to be no deficit. But in this state in one year there is famine caused by excessive rain and in the next year if there is no famine due to scarcity of rain, there would be grass hoppers and if no grass-hoppers then there would be frost. There would be something definitely. I, therefore, humbly request you that credulous people may desire to cheat you but they are to be annihilated. Power remains in the hands of Congress and if you support congress you will become partners of sin and you will be ruined. And the Swatantra Party whose symbol is 'Star' will save you. I request you to make a mark on it. I have come to convey message of Jagadguru."

In this passage the translation is inaccurate at one place where it says "will command you". It should be "commands". This passage requires careful consideration. The speaker here reminds the audience of the fact that Jagadguru that is to say Shankarcharya had been fasting for the last 73 days yet Government has not taken it into consideration. Then pointedly draws the attention of the listeners to the fact how the followers of another religion would behave if their religious leader were to give a call. He says that if a Maulvi were to give a command to Mahomadians not to vote for the Congress would a single Mahomadan ever vote for the Congress? Immediately follows the statement "then your religious preceptor also commands that not a single vote should be given to the Congress". For a while the speaker then explains why Manubhai—respondent No. 1 has decided to contest the election but then reverts to the subject and tells the voters how formerly when there was a famine in this country in a particular year, next year double the quantity used to grow and there used to be no deficit. But tells the audience that in this regime in one year there is famine caused by excessive rain and in the next year if there is no famine due to scarcity of rain, there is destruction by locusts and if no locusts are there, then there is frost. There is something or other definitely happening. He therefore appealed to the audience that these people viz., the Congressmen who were trying to cheat the credulous people must be annihilated. If the congress is supported and power continues to remain in their hands, the voters will become partners in the sin and they will be ruined. If Swatantra Party is voted whose symbol is the star, it will save them. He winds up this passage by saying that he has come to give the message of Jagadguru.

Mr. Nanavaty contended that this passage also is innocuous. Even when the speaker conveyed that Jagadguru is giving the command, the audience was not likely to be affected in any way as the audience would immediately doubt the words of the speaker. He urged that in these days of quick and scientific modes of communications they would expect Jagadguru to either speak on the radio or publish any written appeal or some such method he would adopt if he wanted to communicate such a command. He submitted that therefore this sort of speech would not have that force which a written appeal or personal appeal would make. I find it difficult to agree with Mr. Nanavaty that the audience would immediately doubt the words of Shambhu Maharaj because no written appeal was made by Shankarcharya or that he had not spoken on the radio. To my mind, all depends upon the nature of the audience, the person who is speaking and how it is said and in what context it is said. I shall deal with this aspect specifically a little later. But in my view this passage read by itself or in context with the whole speech does fall within the purview of the corrupt practice alleged. As we have noted, in the very beginning of the speech the speaker had played up upon the religious sentiments of his listeners by impressing on the mind of his listeners that in this world even the best of Government cannot give any happiness and it is God alone who can give happiness. But God will never help if religion is not followed. He then pointed out that the Congress was not following religion and is committing a sin by not stopping slaughter of cow and its progeny. Thus he tried to cast a spell over the mind of the audience, of religious beliefs of divine benevolence when religion is followed and divine displeasure where religion is not followed or sin is committed. Then after touching some other topics he comes to the portion of the—speech wherein in the first part he draws the attention pointedly to the 73 days' long fast of Jagadguru and the apathy of the Government in respect thereof. Then he whets up the feelings of the Hindu audience by placing the challenging question to his listeners that if a Maulvi were to give a call to the Mohamadans not to vote for Congress, would a single Mohamadani vote for the Congress. This question was posed obviously with the intention to excite fanaticism. He then comes out with the command of Jagadguru by saying then your religious preceptor also commands that not a single vote should be given to the Congress. There is little doubt that the speaker incited the religious feelings of the Hindu voters by telling how the—followers of the other religion would react to—the command of their religious leader and then impressing on that the religious leader also command that they should not vote for the Congress because Congress was irreligious as it permitted slaughter of cows and its progeny and to stop this sin their religious head had gone on fast which was ignored by the Congress Government and therefore the Jagadguru commanded them not to become partners in the sin by voting for Congress and returning them to power. This by itself accounts to spiritual threat as implicit in this is the threat of divine displeasure or spiritual displeasure if the command of the religious head is not heeded to. But what is more important to note is that the speaker does not stop at that. He, after playing upon the minds and religious sentiments of the audience on this aspect went on to rub in further the fact that all the natural calamities that befall the country in recent year was the consequence of the sinful congress regime. There is a powerful subtle suggestion pervading the speech that the calamities and all the unhappiness they were experiencing were not due to any failure of economic policy of Government but they were due to the irreligiousness sinful attitude of the Congress Government. Then he directly told them

that if inspite of all this, they were to vote for the Congress, they will be nothing less than to be partners in the sin and there will be ruination and again ends up this part of his speech by repeating that he had come to convey the message of Jagadguru. Spoken at this juncture and in the context of what he said before this, would definitely convey to the listeners that all that he had said was the message of Shankarcharya himself who had conveyed to them that God was—displeased because of Congress; calamities were the consequence of the Congress regime which did not prevent slaughter of cows and its progeny and they should not therefore vote for Congress, otherwise they themselves would be sinners. Apart therefore from the fear of becoming object of divine displeasure or spiritual censure on breaking the command of the religious leader, there was the message from that leader that if they vote for the Congress, they will bring ruination and will commit a sin. Thus the voters were directly told that if they were to vote for the Congress, they will render themselves the object of divine displeasure or spiritual censure. Under the circumstances, I find it impossible to accept Mr. Nanavaty's say that the main theme in this passage is only a political criticism of the policy of Government on failure to enforce total ban on slaughter of cow and its progeny. The shift of emphasis is positive and to obvious to be ignored however liberally the speech may be construed keeping in mind the principles laid down by the Supreme Court as there was a clear inducement to make the voters believe that because of all calamities was the Congress regime which was sinful and God was displeased and that therefore their religious head commands not to vote for the Congress for to vote for them will be nothing else but committing a sin; that they shall not disobey the command of their Dharamaguru just as the Mohomadan would not. It is difficult indeed then to come to the conclusion that this would not induce a belief in the listeners that if they were to vote for the congress candidate, they will be rendered objects of divine displeasure and spiritual censure.

But the speech is not yet over. There is one more impugned passage to be considered and it is as follows:—

"Many people ask me that Congress men are happy and although we are working hard we are unhappy. By quoting an instance and giving a lengthy explanation it was said that there were a goat and a dog at the place of a butcher. the butcher used to give good articles of food to the goat but he was not giving the same to the dog. So the dog used to feel unhappy. The dog was not favoured. But one day the butcher came with a knife and so the dog felt that the butcher would kill him but the butcher cut the goat. Therefore you should not believe that God is kind to congressmen 'Bakri-Id' is coming and so we shall take care. But you remember I give you promise that you should keep full faith in Swatantra Party on 18th instant and you should not give your vote to those four obdurate persons who make (people) drink liquor and come for votes. To vote for them is to give a knife in the hand of a butcher. Shri Jagadguru Shankarcharya, the religious preceptor of us, forty crores of Hindus commands that a real Hindu would not give a single vote to Congress. We are Hindus and have our culture. We are ready to sacrifice ourselves for our religion and so vote is of no value. We are not to lose anything in this. I, therefore, humbly request you and ensure you that Swatantra Party will do your work and you should vote for candidates of Swatantra Party.

The first part of this passage is innocuous by itself. He only tries by a simile to describe the Congressmen and conveys to his audience that their days were not numbered as the election was nearby. But then he again returns to make a powerful appeal to his listeners majority of whom are proved to be Hindus, in the name of Jagadguru who was, he said, the religious head of forty crores of Hindus and who commanded them that no person who really believes in Hindu religion should give his vote to the Congress. Then again there is an appeal to their religious sentiments by telling them that Hindus have had their own culture behind them and Hindus have been always ready to give any sacrifice for their religion, so they should not vote for—Congress. So have again he told the listeners in the name of Shankarcharya that as Hindus, he commanded them not to vote for Congress.

As regards the reference to natural calamities in this part of his speech which was—depicted as a result or effect of the sinful congress regime as it did not ban slaughter of cow and its progeny, Mr. Nanavaty had a submission to make. He contended that because and effect reasoning cannot have any repercussion on the mind of the listeners unless it is a statement of fact that is to say the calamities as listed by the speaker in his speech had as a matter of fact occurred. Otherwise the listeners would put aside this part of the speech as a mere tall talk on the part of the speaker. Here too I find myself unable to accept the reasoning of the learned Advocate. It may be that there was some exaggeration in the statement but there is no doubt that the country had suffered from one or the

other calamity in one form or the other in one or the other part of the country and agriculture and its produce had several set backs, in recent years. This appeal was being made by the speaker before the rural population who were hit harder than the urban population in this respect, and this reference was bound to make a deeper impression on their mind.

On behalf of the petitioner, reliance was placed on the decision of the High Court in Election Petition No. 3 of 1967 wherein the speeches of Shambhu Maharaj in the election—campaign at other places came in for construction by that Court. My attention was drawn particularly two or three passages with which the Court was concerned in that case which are very similar to those in this speech Ex. R-1 particularly the reference to the mandate of Jagadguru Shankarcharya and the natural calamities and their cause and effect and situation in respect thereof. Divan J. who decided that matter has a very similar reasoning come to the same conclusion as I have and I may refer with advantage to relevant portion. One of the impugned passages there was as follows :—

“For example, if any mauvi from Macca has fasted for 73 days and had given such a mandate to our Muslim brothers, then would they have voted for the Congress. That you have to consider. In the same manner, if Fatch Singh, the religious leader of Sikhs, had fasted for 73 days, would they (Sikhs) have voted for the congress? In the same manner if there were parsis or Christians, then they also would vote for their religious preceptor. This is what you have to consider. The mandate of your religious preceptor is that do not cast your vote for anyone, the mandate of the Jagadguru is that 1st cows be slaughtered, 1st bullocks be slaughtered. In Gujarat State though there is ban, still bullocks are allowed to be slaughtered; the bullocks which give every individual happiness throughout the life. This Government asks for vote in the name of the bullocks (the Congress party election symbol being a pair of bullocks with yoke on) and I am, therefore, having an experience. Do not vote for the Congress for voting for the congress and by putting the mark of voting on the symbol of bullocks, amounts to cutting the throat of a bullock by a knife symbolised by your vote. It is my mandate that you should not do this dasterdly act.”

The learned Judge in respect of this passage has observed that it was to be remembered that Shambhu Maharaj himself was not the religious leader of any section of the people. He himself merely purported to convey to the electors the mandate of the—Jagadguru Shankarcharya of Puri. To that extent, Shambhu Maharaj was merely a conduit-pipe purporting to convey the message of Jagadguru to the voters but all the same he has urged before the electors that it was a mandate from the religious leader that they should not vote for the Congress Party-candidate. The learned Judge goes on to say that if the words had merely rested with the mandate, then there would have been something to be said in favour of the first respondent so far as this particular passage was concerned. But the contest in which this mandate was set out, viz., comparing Hindus with Muslims, Sikhs, Parsis and Christians and stating that numbers of other communities would not have disregarded the mandate of their own religious leaders, if such leaders had fasted for 73 days, is very material. That the voters have been asked in the name of the mandate from their religious leader not to vote for the Congress Party. The learned Judge then relied upon *Ram Dial's* case (supra) and observed that it was clear in his mind that in the name of Shankarcharya of Puri in the context of his fast for 73 days, an appeal in the name of religion was made by Shambhu Maharaj to the electors in this meeting, and there was implicit in its divine displeasure or spiritual censure if this particular mandate purporting to come from Shankarcharya of Puri was not to be obeyed. The learned Judge has further observed that what was being put forward in that particular passage before the electors was the imagined conduct of Muslims, Sikhs, Parsis and Christians on the one hand and Hindus as a community on the other. Hindus are followers of a particular religion are asked to obey the mandate issued by their own Jagadguru, who had fasted for 73 days and in the cause of ban on cow-slaughter and against that background it has been stated that voting for the Congress would amount to killing cows and bullocks and this act has been referred to as a dasterdly act. The learned Judge has therefore emphasized the fact by putting into juxtaposition the Muslims, Sikhs, Parsis and Christians on the one hand obeying the mandate of their religious leaders and Hindus on the other. He therefore concluded that there could be no doubt that in that passage Shambhu Maharaj had put forward an appeal to the electors not to vote for the Congress Party in the name of the religion and secondly though there may not be any threat of divine displeasure in this passage in expressing terms, implicit in it was the threat that those who did not obey the mandate of Jagadguru would be incurring spiritual censure or divine displeasure.

Mr. Nanavaty argued that the command of Jagadguru cannot have any effect even if spoken by Shambhu Maharaj unless it is proved that as a matter of fact such a mandate

was given by him and that Shambhu Maharaj was authorised to convey that candidate. I am not able to accept this submission of Mr. Nanavaty. What we are concerned with is to see the impact of these statements falling from the mouth of Shambhu Maharaj before his audience. The actual truth of what he said has hardly any place in determining whether Shambhu Maharaj had induced or attempted to induce the specific belief. Mr. Nanavaty had however reasoned that Divan J. came to the conclusion that he did because he had actually assumed that the mandate in fact was given and Shambhu Maharaj was authorised to convey that message. He pointed out that the learned Judge has said that Shambhu Maharaj was merely a conduit pipe which necessarily implied that there was in fact the mandate and therefore something which existed passed through Shambhu Maharaj who acted as a conduit pipe. I am unable to read any such implication in the said observations of the learned Judge. Reading this passage carefully, on the contrary, I find that the learned Judge has advisedly used the words "purporting to convey the message" of—Jagadguru to the voters "immediately in context with the expression conduit pipe". Again even earlier, he has said "He (Shambhu Maharaj) himself merely purported to convey to the electors the mandate of Jagadguru Shankaracharya" and even latter again we find the words "if this particular mandate purporting to come from Shankaracharya of Puri were not to be obeyed". Reading the passage as a whole therefore the impression that is carried in my mind is that the learned Judge only meant to say that when the purported message of Shankaracharya was placed before the audience, though Shambhu Maharaj was not himself a religious leader, this act of his whereby he purported to convey the mandate of Shankaracharya, it was sufficient to impress the audience that a mandate by Shankaracharya was given. By the use of the word 'conduit pipe' I think he only wants to convey that Shambhu Maharaj appeared to be a conduit pipe through whom the message was delivered to the listeners I regret, therefore, that I am not able to accept this submission of Mr. Nanavaty.

The second passage with which Divan J. was concerned is as follows:—

"The Congress says that it has brought happiness and will give happiness in future; but even a father cannot give happiness to his son, nor can a son give happiness to his father. Giving happiness rests in the hands of God. But God gives happiness where there is religion. He does not give happiness to the irreligious.

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Formerly there were no famines. Possibly once in 100 years there might be one famine. As against that now-a-days every year there is some natural calamity like a famine. Either there is no rain or there is frost or there is visitation of locusts or there is some disease in the crops and some calamity or the other is constantly visiting us. The reason for this is that Congress permits slaughter of 33,000 bullocks everyday. When slaughter of cows is banned, bullocks are allowed to be slaughtered. In Gujarat 12,000 bullocks are being slaughtered."

As regards this passage, the learned Judge found that a cause add effect relationship between the natural calamities on the one hand and the slaughter of cows and bullocks which was permitted by the Congress Government on the other had been put forward before the voters by Shambhu Maharaj. The listeners were informed in clear terms that the natural calamities like famine, frost, visitation of locusts or disease in crops were all due to the permission for slaughtering of cows and bullocks granted by the Congress Party. Thus the voters were told that natural calamities, which visit only the irreligious, were due to the action of the Congress Party in permitting the said slaughter and then the voters were asked not to vote for the congress but to vote for the Swatantra Party candidate. Various other topics regarding economics, agriculture and politics were discussed in the course of his speech but the direct causal relationship between the cow-slaughter and the natural calamities clearly shows that the voters were told that if they did not want such natural calamities to visit them, they should not vote for the Congress Party and thus avoid the divine displeasure, which was responsible for those natural calamities. The learned Judge has also observed that in the beginning the voters were told that happiness could come only from God and God could give happiness to the religious and not to the irreligious. Within a short time thereafter, a reference to natural calamities was made and they were told that they were all due to cow-slaughter being granted by the Congress Party. He came to the conclusion that reading those passage together, there could be no doubt that the electors were told not to vote for the Congress Party and in order to secure their happiness as religious minded people and to avoid being irreligious, not to vote for the Congress Party but to vote for the Swatantra Paksha. The Reading of the two passages together, would only seen that they amounted to interference with the ex free exercise of the electoral right of the voters by holding out threats and divine displeasure and spiritual censure.

The last passage in the said case was as follows :—

"The time of election has arrived. The Congress Party is carrying on its propaganda desperately but what I want to say is that if Swatantra Party comes into power then it will not turn your roof-tiles into gold. Only God gives happiness. There is frost, there is rust in the crops, there is excess of rains, there is a famine all there are due to the workings of God. Everyday twenty-four crores of cows are being slaughtered, then how God will tolerate that and how will you get happiness?"

Look at the Congressmen who are destroyers of Hindu Religion;

Every year we get one or the other natural calamity like excessive rain, or failure of rain or earthquake. This happened because they ask for votes in the name of live bullocks, whereas they get the bullocks slaughtered. The symbol should be of butcher and except ruthless and hard-hearted Congress, nobody else will get bullocks slaughtered."

In respect of this passage, the learned Judge's reasoning was that reading the first and the third parts of this passage, it was clear that Shambhu Maharaj was putting before the audience the cause and effect relationship between the natural calamities and the displeasure of God because of the large number of cows being slaughtered in the country. For the reasons that the learned Judge adopted for second passage to which I have made reference, he came to the conclusion that this also amounted to corrupt practice under section 123(2), proviso (a) (ii) of the Act. These observations of the learned Judge on these three passages fully support the view I have taken on the passages almost similar in wording on a similar reasoning.

It was Mr. Nanavaty's contention that before a mandate can be said to have any effect or to induce a belief of the impugned nature, it must be shown that the audience was of such a character as could be said to be the followers of Shankaracharya who believed that he was their religious head or that they consisted of persons as would accept as true all that was said by Shambhu Maharaj. It was argued that there was no evidence that the people of these localities believed Shankaracharya to be their religious head nor was there any evidence to show that Shambhu Maharaj was *persona grata* with the people of these places where these three speeches were made. The stand that Shankaracharya is not shown to have been accepted as their religious head by the people of these places was taken for the first time on behalf of respondent No. 1 at the time of the arguments. In the speeches of Shambhu Maharaj, passages whereof have been incorporated in the petition, it is affirmed that he was the religious head of the Hindus numbering not less than forty crores. The respondent No. 1 does not seem to have demurred by even suggested in his long detailed written statement that Shankaracharya was not—believed to be the religious leader of Hindus by the people of those localities. On the contrary when the additional written statement was filed after the last amendment of the petition was allowed, we find the following averments therein: that "The petitioner has not shown or even alleged that Shankaracharya had in fact conveyed any message or mandate to the audience through Shambhu Maharaj at the several places where Shambhu Maharaj is alleged to have spoken". Further on it has also been mentioned that it was the submission of the respondent in the alternative that unless Shankaracharya had himself given any mandate or message to Hindus or unless the person who speaks in the name of Shankaracharya or purports to convey any message or mandate from Shankaracharya discloses any due authority from—Shankaracharya to the audience to whom he is addressing the alleged message or mandate of Shankaracharya as conveyed by the speaker cannot solve cause any effect on the voters so as to take away their freedom—of choice of candidate. Further as it is said that is not shown by the petitioner nor is alleged that Shankaracharya of Puri besides undertaking fast—demanding complete ban on cow-slaughter and slaughter of milch cattle had made any public statement or had in any manner exhorted voters not to vote for—Congress candidates at the general election. It is then stated that it was therefore improbable—that if the audience which was addressed at several places by Shambhu Maharaj would take it that there was a mandate or message from Shankaracharya to them not to vote for Congress, when Shankaracharya himself had not issued any such public statement at any time before the election. Implicite in these statements and reasoning is the fact that it was not contended that Shankaracharya was the religious leader of the Hindus and the only contention was that it was not shown that this religious leader had as a matter of fact issued such a mandate and alternatively that unless such a mandate or message was given personally by Shankaracharya, it cannot have the alleged effect. But apart from that as I shall point out, under the facts of the present case, it would not be necessary even to prove as an established fact that the listeners were actually the followers of Shankaracharya.

As regards Shambhu Maharaj, it is true that he was not any religious leader as such. But there is evidence to show that he is Kirtankar of repute, that he is well known for his Bhagvat Saptahs. The evidence has disclosed that he was a respected person and was connected with the propagation of theology of Hindu Religion. His speeches would also indicate that he was in good demand for Bhagvat Saptah. It is true that contents of the speeches themselves where the speaker says something about himself may not be evidence by itself but it may indicate that the witnesses of the petitioner when they said that he is a religious minded person and well respected, there is no reason to disbelieve them on that point.—Witness No. 10 for the Petitioner—Ganeshbhai Jathabhai Patel has said that he was working for the—Swatantra Paksha during the election period; Punambhai had entrusted him with the work of carrying on propaganda for Manubhai in Cadh Circle. He had suggested to Punambhai that the voters in that locality were uneducated and they had deep belief in religion. Therefore it would help in the propaganda for securing voter if a meeting was held in that locality wherein Shambhu Maharaj came and addressed the meeting, and therefore Punambhai had arranged a meeting on the 9th of February 1967 at Cadh in which Shambhu Maharaj had delivered his speech. In cross-examination this witness has said that he had heard Shambhu Maharaj twice or thrice at Palanpur. Now it is true that Punambhai has denied having had a talk with Ganeshbhai during the period of the election. But he admitted that he had met him after the election. He was not prepared to deny straightway the claim of Ganeshbhai but he had worked for the Swatantra Paksha during the election and he merely said that he did not know whether he did the propaganda work on behalf of the Swatantra Paksha or not because he had not gone to Doosa assembly constituency. He denied that Ganeshbhai had made any suggestion for calling Shambhu Maharaj. Even as regards the meeting at Cadh, in cross-examination Punambhai said, he did not remember whether on the 9th there was a meeting at Cadh or not. In the light of the fact that this witness Ganeshbhai has changed his affinity and had worked for the congress after the election, in the Panchayat election, he cannot be said to be an—Independent witness. But so is Punambhai not an independent witness, and here there are circumstances which make no accept Ganeshbhai's evidence of Punambhai. Punambhai's evidence on the point is not such as inspires confidence. Punambhai had also tried in the beginning to suggest in his evidence—that he had never arranged any meetings of—Shambhu Maharaj but then subsequently had to admit that he had instructed the Swatantra Paksha—Palanpur that if Gauvadh Andolan Samiti is desirous of holding meetings of Shambhu Maharaj, then facilities for holding such meetings should be given. He said that he did not remember whether before the 8th and 9th of February and after 14th of January, any meetings of Shambhu Maharaj were held in this area or not. But then he remembers that on the 26th of January a meeting of Shambhu Maharaj was arranged at Tharad by the Swatantra Paksha and he had published a pamphlet for calling this meeting under his signature as the organiser of the Swatantra Paksha. Then again he evaded the question and said that he did not remember whether he had arranged with Shambhu Maharaj to come and speak in the meeting at Vav and Tharad and other meetings for the 8th and 9th of February. But he did admit later that he had—accompanied Shambhu Maharaj at Dhima and that he had also gone to the meetings of Iqbalgadh, Amirgadh and Vav. He said that it was not true that in the—meetings in which he was present, Shambhu Maharaj had appealed to the voters to vote for respondent No. 1. Now this is obviously inconsistent with the reports of the meetings to which I have already referred to. This is the nature of the evidence of Punambhai. In his evidence, he has not tried to suggest at all that Shambhu Maharaj was *persona grata* with the people or his words would not be accepted as true statements or that when in his presence Shambhu Maharaj said that there was a mandate from Shankaracharya, it was not likely to be believed to be true. At this stage it would not be out of place to consider the question of burden of proof. There can be no doubt whatever that the burden of proving—corrupt practice is all through-out on the petitioner who alleges that the corrupt practice has been—committed. But the burden so stated is the legal burden of proof. But the phrase 'burden of proof' has two distinct meanings viz. (i) the burden of proof as a matter of adducing evidence and in its second meaning it keeps shifting from shoulder to shoulder as the evidence is led in a given case. *vide Sheopal Singh v. Ram Pratap*, A.I.R. 1956 S.C. 677. Here to my mind, so far as this aspect of the case is concerned, the petitioner has led evidence on the record to show that Shambhu Maharaj was a man—respected and he was a person who had his activities mostly connected with the Hindu religion and a man of repute. I feel all the more convinced, because Shambhu Maharaj appears to have been considered even by Punambhai and the Swatantra Paksha as a matter of fact, to be a person whose word would carry weight with the electorate of that part. It is true that Punambhai has tried to suggest that the meetings of Shambhu Maharaj on the 8th and 9th were not arranged by the Swatantra Paksha but were arranged by Gauvadh Andolan Samiti. All through-out this proceeding, there is no such suggestion to any of the witnesses of the—petitioner nor has any such stand been taken in the written statement, I am inclined to think that

this is put forward for the first time in order to—escape liability. But even then he had to admit that he himself was a member of that Samiti and he had actually instructed the Swatantra Paksha to give all convenience and help to hold meetings of Shambhu Maharaj if such help was asked for by the Gauvadh Andolan Samiti. As already pointed out, he himself was the organiser of the Swatantra Paksha. Not only that but there is also the evidence, as already pointed out, that on the 26th of January, actually a pamphlet was published by him as the organiser of the Swatantra Paksha for holding the meeting of Shambhu Maharaj. Under the circumstances, I am not prepared to accept the statement of—Punambhai that the meetings of 8th and 9th were not arranged by him as the organiser of the Swatantra Paksha. This indicates that the Swatantra Paksha did think that Shambhu Maharaj was a speaker whose word carried weight with the listeners of the locality and would help in swaying the mind of the electorate in favour of respondent No. 1 and the candidates of the Swatantra Paksha.

While I am considering this question as regards the effect of the impact of the speech of Shambhu Maharaj and the status of Shankaracharya and Shambhu Maharaj, one of the facts to be taken into account is the kind of character of voters before whom speeches were made. It is true as was held in VII Guj. L.R. 753 (supra) the character of the audience cannot be considered to be a condition precedent to the determination of the question as to whether a corrupt practice alleged has been committed or not. But as pointed out in that case, under certain facts and circumstances, it is a relevant factor to be taken into account while judging the issue. In the present case, the—petitioner has produced the last census report of the year 1961. He has also produced certain extracts in English from that report. Mr. Nanavaty fairly did not object to its production. This census report indicates that in the localities where the speeches were made, the percentage of population of the Hindus is almost 90 per cent. It also shows that out of the percentage of total population in the rural area is 6.68 per cent is of the Scheduled Tribes. As regards literacy we find that in Palanpur rural area the per centage is 14.92 per cent in Vav, Thorad and Radhanpur area it is 7.64, 6.96 and 6.77—respectively. It is true that as this census report is of 1961, thereafter some changes must have taken place but even giving a fair margin for the changes, it can be seen that the majority of population in the locality is of the Hindus; that there are Scheduled Tribes and Scheduled Castes people in the rural area and that percentage of literacy is very low. Witnesses of the petitioner have given some idea about the types of persons who attended the meetings. They said most of them were Hindus and Punambhai has conceded that in the areas where speeches of Shambhu Maharaj were held, majority of the population is of Hindus. The evidence on the part of the petitioner also shows that most of the persons who attended those meetings were Advaitas or Raharis. But even if this oral evidence is not given much weight, the official record that I have mentioned does indicate the character of the persons of the locality who must have attended the meetings. The impact of the speeches, therefore, on the mind of such audiences has to be judged. The petitioner's witnesses have also suggested that people in the locality were religious minded. But even this aspect may not be taken into consideration. To my mind, under the facts and circumstances of this case and having regard to the character of the voters to whom Shambhu Maharaj had addressed, even though there may be no direct evidence to show that the listeners were actual followers of Shankaracharya, or that there is no direct mandate of the Shankaracharya, the speeches must be held to have had the tendency to make Hindus voters having ordinary religious beliefs of the Hindus, to believe that if they were to contravene the command of Jagadguru, they would be betraying their religious leader particularly in view of the fact that he had staked his life in the cause of prevention of slaughter of cow and its progeny which to mind has come religious significance to the Hindus. It would also appear to his listeners that they will commit a sin if they voted for the congress which would render them objects of divine displeasure bringing in its wake ruination. They may also have the foreboding that they may have to suffer more natural calamities if they were to vote for the Congress, as the sinful congress regime was said to be the cause of the natural calamities they have had to undergo. In this respect, I may again refer to the case of VII Guj. L.R.P. 753 (supra) wherein it is observed that the matter is also not to be tested from the point of view of a highly intelligent and—sophisticated voter. It has necessarily to be tested from the point of view of an ordinary voter, subject to be swayed, specially if an appeal happens to be made by a religious leader by motions of his future spiritual welfare or ultimate Salvation. Similar is the view taken by Divan. J. in Election Petition No. 3 of 1967 (supra).

Mr. Nanavaty then urged that in the decision of Ram Dial v. Sant Lal and others (supra) the Supreme Court is directly dealing with the case of the alleged corrupt practice under proviso (a) (ii) of section 123(2) and therefore it is not possible in the present case to any even though it may have been possible to say in VII Guj. J.R. 753 that the ratio of the decision was not that the words the religious head used in a document, or uttered in his speeches

would amount to corrupt practice only if they leave no choice to the persons addressed by him, in the exercise of their—electoral rights. Therefore, unless the—appeal is of such a character as leaves—no choice to the persons addressed by him to the exercise of their electoral right, it would not amount to corrupt practice. Assuming for argument's sake that the said proposition is the ratio of that Supreme Court decision and is applicable to the present case, even then to my mind, the present speech cannot escape falling within the purview of that ratio. As pointed out the audience consisted of the rural population of the Hindus unsophisticated backward class people most of them illiterate and the effect of the speech as indicated was three fold (i) that their religious head had commanded them not to vote and contravention thereof would amount to betrayal of their religious head, (ii) that the mandate of the religious head was that it would be a sin to vote for congress which would bring ruination, as the congress was irreligious and sinful and (iii) that they should not vote for Congress because if they did, they will commit a sin which would visit them with further calamities. All this would have at least the tendency to induce the voters to believe that if they did vote for the Congress, they will be rendered objects of divine displeasure or spiritual censure. There can be hardly any better case where it can be said that the voters were left with no choice but to vote for the Swatantra Party candidate and not to vote for the Congress Party candidate.

I will now deal with the two other speeches made by Shambhu Maharaj. I do not propose to deal with these two speeches in details as the pattern and tone thereof are similar to the one in Ex. B-1. I have examined the impugned passages, keeping in mind the principle that they are to be judged in the setting of the whole speeches I found that they stand on the same basis as those already considered at same length appearing in report Ex. B-1. In the speech Ex. B-3 made at Amirgarh soon after he opened his speech, Shambhu Maharaj has said that he had come to give the mandate of Jagadguru. A little thereafter follows the impugned passage which is as follows:—

"You yourself may say who has killed Gandhiji, these congressmen or Godsc? Sun rises and twenty two thousand cows are slaughtered. In countries like Pakistan and Afganistan the cow-slaughter is prohibited. In Madhya Pradesh ox-slaughtering is prohibited before ten days. When I observed fast four hundred Mohammadan brothers had observed fast with us. The Swatantra Party gave me promise that after the Swatantra Party comes to power an ordinance will be issued by the Governor in its first session and slaughtering of cow-progeny will be exempted. So I stopped civil disobedience and I have started to awaken the people. In Ahmedabad there is prohibition on cow-slaughter but the slaughtering of calf and ox is—continued. The earth took the form of cow and if the said Gaumata or ox is slaughtered how can the earth be satisfied and as long as the earth is not satisfied how can there be fertility in the earth?"

In my judgment, this passage by itself cannot be held to fall within the vice of section 123(2) proviso (a) (ii) of the Act. The second passage is as follows:—

"To compare congress with Ravan is to defame him. One Hajrat Bal was removed and it was required to be brought in four days. Sant Fatehsingh observed fasts and the Government had to bow down in nine days. The Government bows down before those who take out 'Kirpan' (chisel) and when we pray with folded hands it mocks at us. In foreign countries Hindus are put to shame. People spit at Hindus and they pass bitter remarks and say 'Brave to five crores Mohammadan-brothers that they brought Hairat Bal, Brave to forty laos Sikhs that they have taken Chandigarh and fie to your forty crores Hindus that the religious-preceptor is required to observe fasts for seventy days and suffer torments and still the Government does not listen. When the Lord Bishop came to Bombay these leaders had gone to wash his feet. For the sake of Dalailama enmity is created with China and when the religious preceptor of its own country observes fasts for 73 days no bristle of Government moves. Out of forty crores may have fallen and over ten crores Bahuchraji may have shown favour but Jagadguru must have this much confidence that twenty crores brave Hindus are his supporters. They will act according to my command. Guru Govind Singh had said "Death is certain then why not die properly, that is not to sat 'Shria' (sweets) and 'puri' and then die but it is a matter of becoming immortal by dying for 'Gaumata' (cow) and for mother land."

In this passage the speaker has referred to the loss of Hazrat Bal and its recovery within four days and then to the fact of Sant Fatehsingh and Government yielding to the pressure of that fast. Then to pointed out the fact that in foreign countries, Hindus were put to

shame and people pass bitter remarks. While praising the Mohammadans and the Sikhs he criticised the Hindus that their religious-preceptor should have been forced to observe a fast for seventy days and suffer torments and the colourness of the Government about it. Then he refers to the fact that Jagadguru at least must be having this much confidence in at least twenty crores of Hindus who are his supporters that they will act according to his command. Now this passage cannot by itself be held to contravene the relevant provisions of law. But this reference to the mandate from Jagadguru referred to in the manner hereabove will have to be considered later in context with the other impugned passages. The third impugned passage is as follows:—

"In the year 1942 sixteen lacs and in 1946 twenty four lacs and in 1947 after India became separate and at present about one crore cows are slaughtered. You say whether to vote for Congress is to become partner in sin or any thing else. If you give cooperation for good cause you may get good fruit and if you co-operate in committing a sin you become partners of sin. Why you become a partner of sin by giving votes to Congress? I have travelled eight thousand miles and I am satisfied that the Swatantra Party is going to form Government. Our religious preceptor has issued a command that the Congress Government have insulted forty crores of Hindus and therefore they should do such a thing that the Congress candidates even forfeit their deposit and they should not vote for Congress as they would also become partners in the sin if they were to do so. Reading the two passages together therefore there is a clear transgression of the provisions of section 123(2) (ii) as I have already discussed.

In his speech at Vav which is Ex. B-4 the first impugned passage is as follows:—

"Any best Government or Institution can give you means but God alone gives happiness. A Government may give you 100 bighas land for doing cultivation and give you loan for purchasing oxen. If you have cultivated 100 bighas cotton and hard frost falls then? And if wheat is cultivated and the red chalk falls then? If good ox is bought and he dies then? I, therefore, say that Government can give means but happiness can be given by God alone. And without the grace of God there cannot be happiness. You can get favour from God when religion is acted upon. Do you feel that congress has allowed religion to remain? At present it is asking for votes on the symbol of Ox. The same Congress gives, permit to Slaughter 9060 oxen every year in the slaughter house at Ahmedabad. If there is any congressman here he may be called. And if Shantilal Shah or G. G. Mchta says that the said statement is false I shall close the propaganda."

In this passage the speaker has merely expounded the philosophy as he had done in the case of his speech at Iqbalgadh that God alone can give happiness and not even the best Government which can only give means but not happiness and that God will only give happiness or favour persons where religion is followed. He then posed the question whether they felt that Congress had allowed the religion to remain. then he answered by saying that it cannot be so said because Congress Government was allowing cow-slaughter and slaughter off its progeny by the thousands. This aspect I have considered while dealing with the first speech and I need not repeat. The second impugned part of that speech is as follows:—

"This Congress has taken away money, land, Gold everything from us. But when the talk of taking away religion which is a means to get heaven—to improve the other world took place Jagadguru required to observed fasts. When one 'Hazrat Bal' was removed to Kashmir it was required to be brought and placed again in four days. Sant Fatchsingh observed fasts and the Government bowed down on the ninth day. People believing in Hazrat Bal keep knife. The followers of Fatchsingh keep chisel. There Government shiver. And when we make demands with folded hands it mocks at us. The Government has not made Jagadguru give up his fasts but we have made him give up the fasts so do not be mislead. Those people become hot excited soon and become calm also soon. We have not become hot (excited) and when we become hot (excited) we do not become calm soon. And when forest falls the roots of trees also get burnt. The people do not know it. These people have insulted us. And the students living in foreign countries write in letters that we are insulted have people spit at us and say "Brave to five-crores Mohammadans that in four days Hazrat Bal was brought. Brave to 40 lacs Sikhs who have taken Chandigarh and fie to you. Hindus, that Jagadguru of 40 crores of Hindus is required to observe fasts for 73 days and die with torture. When Maulvi

must have issued a command and Sant Fatesingh must have started a fast they must have been assured that their followers would not allow them to die. Similarly when our Jagadguru must have started fasts he must also have thought that out of 40 crores of Hindus who are living in India 10 crores may have fallen on account of coming in contact with congress and on 10 crores there may have been grace of Bahucharaji but the remaining 20 crores are my brave Hindus. Must he have such assurance or not? On the 18th cut the nose of this Congress and do such thing that their deposit may be forfeited and their boxes may go empty."

In this passage he has referred to the Hazrat Bal, its recovery and fast by Sant Fatehsingh and Government having ignored the fast of Jagadguru. Then he referred to the fast that when Maulvi must have issued a Command, and Sant Fatehsingh started the fast, they must have been assured that their followers would not allow them to die and then he told his listeners that similarly when Jagadguru must have fasted, he must have at least thought that out of 40 crores of Hindus at least 30 crores were his brave followers. Then again he put a question: should he have such an assurance or not? And then called upon the voters not to vote for the Congress. Then the third passage is as follows:—

"In Pakistan and Afghanistan cow slaughter is prohibited while these people have made an agreement to send six thousand tons mutton to foreign country. They want to get living or slaughtered and they demand vote on the photo of ox. If there is honesty in congress it should keep the photo of a butcher and keep a knife in the hand and say we shall thus slaughter and then ask for vote. Your heart burns when any one tears of the poster having the photo of ox then would our heart not burn when living oxen are killed? The Swatantra Party has given me promise before five days that if it comes in power the slaughtering of cow-progeny will be prohibited by an ordinance of a Governor in the first session and the land revenue of the farmers will be exempted. Therefore your work is to defeat this congress."

There is nothing which in this passage and hence no comments are necessary. The fourth passage is as follows:—

"If a Maulvi from Mucca or the Chief preceptor of Parsis, Mulla, or the Lord Pope sitting in Europe observes fasts for seventy days interest of his followers for some problem and issues a command that any Islam 'Pachcho' (follower of Islam) Parsi or Christian shall not vote for Congress, you yourself may say would any one vote for Congress. So, because a Mohommadan has remained a Mohommandan, a Parsi has remained a parsi. Then have you cased to be Hindus? I have come to deliver a message of our Jagadguru to you that you should not give a single vote to Congress."

Here again the speaker has put Hindu community, it juxtaposition with the other communities like Muslims, Christian and Parsi and said if a Maulvis from Mucca or the Chief Preceptor of Parsis or the Pope sitting to Europe were to fast in the interest of his followers and were to issue a command that they should not vote for the congress, would they have voted for the Congress? And he answered, that they would not because Mohommadans have remained Mohommadans, Parsis have remained Parsis and the speaker then asked the challenging question to his listeners whether they had ceased to be Hindus. Immediately then he told them that he has come to deliver the message of Jagadguru that a single vote should not be given to the—Congress. This passage read by itself and even read in context with the whole speech, would amount to corrupt practice for reasons that I have mentioned while dealing with the first speech the fifth passage is as follows:—

"I, therefore, humbly request you to let go Congress boxes empty. To vote for congress is to get the slaughtering continued and to move a knife over the throat of an ox. To vote for congress is to become a partner of sin. If they want to sit in the chair they may sit. When you should become a partner of sin?"

Here he has referred to the aspect of sin if they were to give vote to Congress. This passage also read to the context of the whole speech would amount to corrupt practice for reasons that I have stated. The last passage is as follows:—

"By giving an instance he has said that the earth had taken form of a cow and religion had taken form of ox. So when an ox is being killed how can earth remain satisfied? Then you may bring tractors or fraze schemes. By the grace of God if a farmer draws a line even then there would be good produce. They had gone to Bombay to wash feet of Pope. For the sake of Dalailama enmity is created with China but when Shri Jagadguru of 40 Crores of Hindus observed fasts no bristles of this Government even moved".

This passage, to my mind, cannot fall with the mischief of the relevant provisions of law. The only main difference to be seen between these two speeches and the one made at Iqbalgadh Ex. B-1 is that there is no reference in either of these two speeches to the befalling of natural calamities as a result of the sinful congress regime. It is true that in the speech at Amirgadh the speaker is least offensive but there also, as I have pointed out, in one of the passages he has transgressed the limit permitted in law. So far as the speech at Vav is concerned, except the reference to natural calamities it is almost as offensive as the speech at Iqbalgadh.

It is important to note that law, even makes an attempt to induce the offending belief in the electorate, a corrupt practice. It is well-established now that though physically or legally it may not be possible to commit a particular offence, yet a person can be guilty of the attempt to commit such as offence. In *Bashirbhai v. State of Bombay* 62 Bom. L.R. 906 it has been laid down that in a prosecution for the offence of an attempt to cheat, the fact that the accused had failed in his attempt to irrelevant in considering whether he had committed the offence of attempting to cheat. In the said case it was argued that there was no attempt to cheat because the complainant had not been deceived. But the learned Judges observed that it was true that the complaint had not been taken in. He had not believed that the accused could actually duplicate currency notes. He feigned belief only in order to trap the accused. That, however, made no differences as far as an attempt to cheat was concerned. That they had failed in their attempt was irrelevant in considering whether they had committed the offence of attempting to cheat. Their Lordships referred with approval, the following observations made in *Government of Bengal v. Umash* I.L.R. 16 Calcutta, 310.

"A man may attempt to cheat although the person he attempts to cheat is forwarned, and is therefore not cheated."

In *Aggarali Pradhania v. Emperor* the same principle is reaffirmed. In the said decision the word—'attempt' has been interpreted and after examining a number of decisions, they laid down that so far the law in India is concerned, it beyond dispute that there are four stages to every crime, the intention to commit, the preparation to commit, the attempt to commit and if the third stage is successful the commission itself. While considering this aspect, they have given an illustration that if a man thrusts his hand into the pocket of another with intent to steal, he does an act towards the commission of the offence of stealing though unknown to him the pocket is empty. He tries to steal, but is frustrated by a fact, namely the emptiness of the pocket, which is not in any way due to any act or—his part. He does an act towards the commission of the offence of pocket picking, by thrusting his hand into the pocket of another with intent to steal. Nevertheless he may be convicted of an attempt to steal. Applying this principle to the offence of corrupt practice which prohibits inducing the belief in the electorate that they shall be rendered objects of divine displeasure or spiritual censure even if it is held that it was not possible for any person to actually induce such a belief in a given audience under given—circumstances, he would still be guilty of attempt to commit the offence. Having regard to all the facts and circumstances that I have already discussed, in my judgment, the making of these speeches cannot in any event escape falling within the clutches of 'an attempt'. Therefore, to my mind for the reasons that I have at length given while dealing with the first speech'. I am satisfied that these two speeches also contravene the provisions of law. There is no doubt that the speaker has in these three speeches referred to a number of topics which may not fall within the purview of the relevant provisions of law. But keeping in mind all the principles which law has laid down to be kept in mind in judging such election speeches, I feel satisfied that Shambhu Maharaj did commit the corrupt practice at these three places by delivering those speeches which fall within the purview of section 123(2) proviso (a) (ii) of the Act.

Before an election of a returned candidate can be declared to be void under section 100 of the Act on the ground of commission of a corrupt practice the Court has not only to be satisfied that such corrupt practice alleged has been committed but has also to be satisfied that it has been committed by the returned candidate or his election agent or any other person with the consent of the candidate or the election agent. In this case, the only allegation is that Shambhu Maharaj committed the corrupt practice with the consent of the respondent No. 1 and/or his election agent. No attempt however was made to argue even that there was satisfactory evidence that the corrupt practice was committed by Shambhu Maharaj with the consent of respondent No. 1 himself. But it was urged by Mr. Daru that there was ample evidence to prove the consent of the election agent Punambhai Patel of respondent No. 1 to the Commission of the corrupt practice by Shambhu Maharaj in all the three meetings. It was argued that this consent must be inferred from the fact that he remained present in all the three meetings and he had not

tried at all to disassociate himself from the impugned statements made by Shambhu Maharaj. On the contrary even though in the first meeting this corrupt practice had been committed, he went with Shambhu Maharaj in the second meeting and the third meeting, took a leading part; remained present and therefore his consent must be inferred. Mr. Nanavaty on the other hand contended that there is no proof of any conscious act on the part of Punambhai to amount to consent in law. It was also argued that here the corrupt practice alleged was not such as could be said to be *par* as corrupt practice and it cannot be said that Punambhai was a lay man, on his own could have decided or understood that such a speech or such a statement in the speech would be hit by—section 123(2) proviso (a) (ii). In this case, it is an admitted fact now and in any case established that Punambhai was present in all the three meetings. He was the organiser of the Swatantra Paksha and in all these meetings, he had spoken first. He went with Shambhu Maharaj from place to place. Then, as already pointed out, he had issued a pamphlet as the organiser of the Swatantra Paksha for the meetings of Shambhu Maharaj of 26th January 1967. As regards the meetings that he attended, there is nothing to show that he tried to demur or protest or raised any objection to utterance of the impugned words. In any case, not only did he object or disassociate himself in the first instance from what Shambhu Maharaj had said which amounts to corrupt practice, but he went with Shambhu Maharaj to the second and the third meetings also. There is nothing to show that he had tried even to stop Shambhu Maharaj from committing that corrupt practice again and again. Under the circumstances, it is impossible to conclude that Punambhai could not have known what Shambhu Maharaj was upto. Mr. Daru relied upon the decision in *Kumara Nand v. Brijmohanlal Sharma* A.I.R. 1967 S. C. 808. This was a case under section 123(4) of the Act and it was held that recitation in public meeting of poem containing false statement of fact with consent and knowledge of a candidate, responsibility for the publication is of the candidate and it is his belief that matters and not belief of the reciter. In the said case the poem was not actually read by the appellant but it was read in his presence at a meeting at which he was presiding and the learned Judges agreed with the High Court that in those circumstances the recitation of the poem amounted to the publication of the false statement of fact contained in it by another person with the consent of the candidate. Their Lordships have kept the question open as to what would be the position in a case where the candidate had no knowledge at all of the publication before it was made. Mr. Nanavaty however, relied upon the decision in *Sheopat Singh v. Harish Chandra* A.I.R. 1960 S. C. 1217 to support his contention that unless it can be said that Punambhai had knowledge that Shambhu Maharaj would utter such words, no consent can be imputed to him. Now in the present case, it may be that if the Court had to depend only on the first speech, there was some force in the argument that Punambhai could not have the knowledge as to what Shambhu Maharaj was going to speak. Even then in my view having regard to the close contact, knowledge could be imputed to Punambhai. But apart from that, as already pointed out, even after the first speech, he associated himself with the Shambhu Maharaj and in his presence Shambhu Maharaj again committed the same corrupt practice and even then he had not disassociated himself. But Mr. Nanavaty argued that the nature of the present corrupt practice was such that Punambhai as a lay man could not have reasoned out there and then that it was a corrupt practice and therefore could have disassociated himself and therefore his mere presence cannot amount to consent. I am not impressed by this argument. If this contention were to be accepted, then in respect of the corrupt of the nature with which we are concerned, it can always be pleaded that he could not know or reason out that the statements made in the speeches amounted to corrupt practice or not. That way any abettor can make a plea that though he know the law and what the ingredients of the offence were he could not make out at the time when he abetted the crime whether the acts which the principal was committing would amount to an offence or not. It may be that the Court comes to the conclusion that the statements amount to the alleged corrupt practice after considering the pros and cons of the allegations and the contentions of the parties, and arrive at the conclusion on a long reasoning, but once it is established that the act did amount to a corrupt practice, in my view it will not be open to the party to say that he could not reason it out himself to be a corrupt practice of the nature alleged and therefore his presence cannot amount to consent to such corrupt practice.

I have considered with care to the able arguments of both the sides and here reasons that I have given, I hold that the consent of the election agent of respondent No. 1 to the commission of the corrupt practice under section 123(2) proviso (a) (ii) by Shambhu Maharaj has been established. As the commission of the corrupt practice and the consent of the election agent of respondent No. 1 has been established beyond a reasonable doubt, as a consequence thereof, the election of respondent No. 1 is liable to be declared void under section 101(1)(b) of the Act.

The petitioner has also sought the relief that respondent No. 2 should have been declared elected to the Lok Sabha. However, the said relief was not pressed by Mr. Daru and rightly so because it is not possible to grant that prayer under section 101 of the Act as it is not possible to say how many votes were secured by the first respondent by the corrupt practice which is proved to have been committed. In the result, the election petition succeeds and I declare that the election of the first respondent to the Lok Sabha from the Banaskantha Parliamentary Constituency to be void because the Corrupt practice committed by Shambhu Maharaj to which the election agent of respondent No. 1 consented. No order can be made under section 99 of the Act against the respondent No. 1 himself as the corrupt practice is found to have been committed by Shambhu Maharaj and the liability of the respondent No. 1 arises only because of the consent of election agent.

As regards costs, in this case actual hearing including the arguments took ten full days. I find, however, that the petitioner has not, right from the stage of issues after they were framed, given up all the grounds that he had alleged. At this stage, he had given up only two of his grounds. Even when the petitioner went into the box, he had persisted in his efforts to establish the various grounds. It was only after about 16 witnesses were examined that the Court and the other side were finally informed that the petitioner was not going to press issues Nos. 5 and 6. Under the circumstances and having regard to all the facts, I award Rs. 2,000/- inclusive of costs of the advocate's fee and other taxed costs of the petition. Respondent No. 1 to pay the said costs to the petitioner.

At this stage, Mr. Nanavaty on behalf of the first respondent applied for stay of the operation of this order to enable the first respondent to approach the Supreme Court, and file an appeal and apply for stay. Under section 116(d) of the Act, the Court is entitled to put the first respondent on terms. The stay order is granted on the following terms: That the respondent No. 1 may attend the sitting of the Lok Sabha in order that he may not lose his seat on the ground of absence but he shall not take Part in the proceedings of the Lok Sabha and shall not draw any pay or allowances and that the operation of this judgment and order shall be stayed for six weeks from the respondent No. 1 getting the certified copy of this judgment and order.

By the Order of the Court,

Sd/- M. A. SYED.

Deputy Registrar (I)

This 9th Jay of May, 1968.

[No. 82/22/67(GJ.)]

By Order,

K. S. RAJAGOPALAN, Secy.

MINISTRY OF HOME AFFAIRS

New Delhi, the 8th August 1968

S.O.2822.—In exercise of the powers conferred by Section 4 of the Laccadive, Minicoy and Amindivi Islands Land Revenue and Tenancy Regulation, 1965 (No. 6 of 1965) the Central Government hereby authorises the Administrator, Laccadive, Minicoy and Amindivi Islands, to appoint the following classes of revenue officers, namely:—

- (a) assistant settlement officers,
- (b) tehsildars,
- (c) revenue inspectors, and
- (d) amins.

[No. 1/2/(18)68-ANL]

R. C. GUPTA, Under Secy.

MINISTRY OF FINANCE
(Department of Economic Affairs)

New Delhi, the 12th August 1968

S.O. 2823.—In exercise of the powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declares that the provisions of section 9 of the said Act shall not apply to the Catholic Syrian Bank Ltd., Trichur in respect of the immovable property held by it at Thoppumpady Palluruthy, Cochin, Ernakulam District, Kerala State, till the 1st August 1969.

[No. 15 (22)-BC/68.]

CORRIGENDUM

New Delhi, the 12th August 1968

S.O. 2824.—For the word 'pledge' appearing in the last but one line of this Department Notification of even number dated the 30th April, 1968, published as S.O. 1622 in page 2162 of Part II, Section 3(ii) of the Gazette of India dated the 11th May, 1968, please read 'pledgee'.

[F. No. 15 (18)-BC/68.]

V. SWAMINATHAN, Under Secy.

(Department of Revenue and Insurance)

ORDER

STAMPS

New Delhi, the 17th August, 1968

S.O. 2825.—In exercise of the powers conferred by clause(a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits [in addition to the remission of duty made in the order of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 14/67 which was published as Part II, Section 3, sub-section (ii) in the Gazette of India dated 16th December, 1967 at page 4602] the duty with which the bonds to the value of eight lakhs and twenty one thousands of rupees issued in excess by the Maharashtra State Financial Corporation are chargeable under the said Act.

[No. 13/68-F. No. 1/38/68-Cus.VII/Stamps.]

M. S. SUBRAMANYAM, Under Secy.

CENTRAL BOARD OF DIRECT TAXES

INCOME-TAX

New Delhi, the 29th July 1968

S.O. 2826.—In exercise of the powers conferred by sub-section (1) of Section 122 of the Income-tax Act, 1961 (43 of 1961) and of all other powers enabling it in that behalf, the Central Board of Direct Taxes hereby makes the following further amendments in the schedule appended to its notification No. 107 (F. No. 50/5/66-ITJ), dated the 27th October, 1966 namely :—

In the said schedule against A-range, Amritsar and C-Range Amritsar under column 2, the following entries shall be substituted, namely :—

A.-Range, Amritsar

1. In respect of orders passed by Income-tax Officers up to and including 14-7-1967.

(i) Distt. I, Amritsar.

(ii) Distt. II(i) to II(v), Amritsar.

(iii) Distt. III (iv), Amritsar.

(iv) Special Survey Circle, Amritsar in respect of persons who have their principal place of business in or reside in the jurisdiction of Distt. I, II and III(iv), Amritsar].

2. In respect of orders passed by the Income-tax Officers after 14-7-1967.

(i) Distt. I(i), Amritsar.

(ii) Distt. I(ii), Amritsar.

(iii) Addl. Distt. I(ii), Amritsar.

(iv) Distt. I(iii), Amritsar.

(v) Addl. Distt. I(iii), Amritsar.

(vi) Distt. I(iv), Amritsar.

(vii) Distt. I(v), Amritsar.

(viii) Addl. Distt. I(v), Amritsar.

(ix) Distt. I(vi), Amritsar.

(x) Addl. Distt. I(vi), Amritsar.

C-Range, Amritsar.

1. All Income-tax Circles, Wards or Districts having Headquarters at Batala.

2. Distt. I(vii) to I(x), Amritsar.

3. (i) Distt. II(vi), Amritsar.

(ii) Addl. Distt. II(vi), Amritsar.

(iii) Distt. II(vii), Amritsar.

(iv) Addl. Distt. II(vii), Amritsar.

(v) Distt. II(viii), Amritsar.

(vi) Distt. II(ix), Amritsar.

(vii) Distt. II(x), Amritsar.

4. Special Survey Circle, Amritsar (in respect of persons who have their principal place of business in or reside in the jurisdiction of Income-tax Officers, Batala).

This notification shall take effect from 29-7-1968.

Explanatory Notes :

The amendment has become necessary on account of creation of new wards at Amritsar.

(The above note does not form part of the notification but is intended to be merely clarificatory).

[No. 66 (F. No. 50/10/68-IT)].

S. V. SUBBA RAO, under Secy.

INCOME-TAX

New Delhi, the 1st August 1968

S.O. 2827.—In exercise of the powers conferred by section 126 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following addition to the schedule annexed to its Notification No. 1 (F. No. 55/233/62—IT) dated the 1st May, 1964.

After the existing entry at S. No. 55 the following entry shall be added:

SCHEDULE

| S. No. | Person | Income-tax Officers in IT Circle | Inspecting Assistant Commissioner of Income-tax | Appellate Assistant Commissioner of Income-tax | Commissioner of Income-tax |
|--------|--|------------------------------------|---|---|--|
| 56 | Employees of the United Church of Canada Missionary Committee stationed anywhere in India. | ITOs in Income-tax Circle, Indore. | Inspecting Assistant Commissioner of Income-tax Indore, Range Indore. | Appellate Assistant Commissioner of Income-tax B-Range, Indore. | Commissioner of Income-tax Madhya Pradesh, Nagpur and Bhandara Nagpur. |

This Notification shall take effect from

[No. 13 (F. No. 55/259/68-I.T.A. III)]

N. SRI RAMAMURTY, Under Secy.

OFFICE OF THE COLLECTOR OF CUSTOMS & CENTRAL EXCISE
SHILLONG

Shillong, the 8th August 1968

S.O. 2828.—In exercise of powers conferred on me under Rule 143 and 233 of the Central Excise Rules, 1944, I hereby order that the following types of processing operations may be undertaken by the warehouse licensees for preservation, sale and disposal of tobacco.

- (1) Unpacking of packages ;
- (2) Sorting and sizing of leaves ;
- (3) Keeping loose in stacks to regain colours;
- (4) Re-packing for clearance.

[C.E. No. 6/68.]

A. K. BANDYOPADHYAY, Collector.

MINISTRY OF COMMERCE

New Delhi, the 9th August 1968

S.O. 2829.—The following amendments made to the Articles of Association by the Madhya Pradesh Commercial Exchange Ltd., Akola, in exercise of the powers conferred on it by sub-section (1) of section 9A of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) and approved by the Central Government are hereby published, as required by sub-section (2) of that section, namely:—

Amendments

In the said Articles of Association,—

(1) in Article 21, in clause (i), for item (a), the following item shall be substituted, namely:—

“(a) Panel of Crushers and Ginners;”

(2) In Article 49, in clause (2),—

(i) for sub-clause (a), the following sub-clause shall be substituted, namely:—

“(a) Not more than three Directors, elected from amongst and by members or their authorised representatives belonging to the panel of Crushers and Ginners;”

(ii) in sub-clause (b), the words “Out of these, not more than two shall be elected from amongst and by the members or their authorised representatives from Akola and not more than one Director shall be elected from amongst and by the members or their authorised representatives from Khamgaon” shall be omitted;

(iii) in sub-clause (c), the words “Out of these not more than three shall be elected from amongst and by the members of their authorised representatives from Akola and not more than one Director shall be elected from amongst and by the members or their authorised representatives from Khamgaon” shall be omitted.

[No. 13(1)-CG(FMC)/68.]

SURENDRA SINGH, Dy. Secy.

(Office of the Jt. Chief Controller of Imports and Exports)

(Central Licensing Area)

ORDERS

New Delhi, the 4th July 1968

S. O. 2830.—M/s. Aeroplane Shoe Factory, Gurdwara Road, Karol Bagh, New Delhi were granted an import licence No. P/AU/1211791/C for Rs. 2,35,904/- on 21-3-1968. They have applied for a duplicate of the Exchange Control Copy of the said licence on the ground that the original Exchange Control copy of the licence has been lost or misplaced. It is further stated that the original licence was not registered with any Customs House and has not been utilised at all.

In support of this contention the applicant has filed an affidavit. I am satisfied that the original Exchange Control Copy of licence No. P/AU/1211791/C has been lost and direct that a duplicate licence should be issued to the applicant. The original Exchange Control Copy of licence is cancelled.

[No. Leather-9/July-Sept.-67/SC-III/CLA]

New Delhi, the 5th August 1968

S.O. 2831.—A licence No. P/SS/1573780/C/XX/23/CD/23:24 dated 26th August 1966 of the value of Rs. 3,000/- for import of Rolled Nickel Anodes was issued to M/s. Chopra Cycle Parts Works, O-16, Industrial Area, Sonapat (Distt. Rohtak) subject to the condition that all the items of the goods imported under it shall be utilised in the licence holder's factory and no portion thereof shall be sold to any other party or utilised or permitted to be used in any other manner.

2. Thereafter, a show cause notice No. C-6/67/ENF/CLA 4-67 dated 7th February 1968 was issued asking them to show cause within 10 days as to why the said licence in their favour should not be cancelled on the ground that the Central Govt. is satisfied that the licence will not serve purpose for which it was granted in terms of Clause 9, sub-clause (cc).

3. In response to the aforesaid show cause notice, M/s. Chopra Cycle Parts Works, O-16, Industrial Area, Sonapat (Distt. Rohtak) furnished no explanation.

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9 sub-clause (cc) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/SS/1573780/C/XX/23/CD/23:24 dated 26th August 1966 for Rs. 3,000/- issued in favour of M/s. Chopra Cycle Parts Works, O-16, Industrial Area, Sonapat (Distt. Rohtak).

[No. C-6/67/ENF/CLA/4229.]

J. S. BEDI,

Jt. Chief Controller of Imports & Exports.

MINISTRY OF STEEL, MINES & METALS

(Deptt. of Mines & Metals)

New Delhi, the 31st July 1968

S.O. 2832.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein.

The plans of the area covered by this notification may be inspected in the Office of the National Coal Development Corporation Limited (Revenue Section), Darbhanga House, Ranchi or at the Office of the Collector, Sidhi (MP) or in the office of the Coal Controller, 1-Council House Street, Calcutta.

Any person interested in the lands mentioned in the said schedule shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Revenue Officer of the National Coal Development Corporation Limited, Darbhanga House, Ranchi within ninety days from the date of publication in the Gazette of India of this notification.

SCHEDULE

Borbi Block

(Singrauli Coalfield)

Drg. No. Rev/29/67
Dated 21-9-67

(Showing the area notified for prospecting)

| Sl. No. | Village | Tahsil | Tahsil No. | District | Area | Remarks |
|--------------------------|---------------|--------|------------|-----------------|------|---------|
| 1 | Gorbi . . . | Deosar | .. | Sidhi | | Part |
| 2 | Naurhia . . . | " | | " | | Part |
| Total area: 705.00 acres | | | | (Approximately) | | |
| OR 285.52 Hectares | | | | (Approximately) | | |

Boundary Description

- A—B—C . Lines pass through village Naurhia and meet at point 'C'
 C—D . Line passes through villages Naurhia and Gorbi and meets at point 'D'.
 D—E—F—G . Lines pass through village Gorbi and meet at point 'G'.
 G—H . Line passes through villages Gorbi and Naurhia and meets at point 'H'.
 H—A . Line passes along the part common boundary of villages Naurhia and Fuljhar and meets at point 'A'.

[No. C2-22(3)/67.]

New Delhi, the 8th August 1968

S.O. 2833.—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby given notice of its intention to prospect for coal therein.

The plan of the area covered by this notification can be inspected at the Office of the National Coal Development Corporation Limited (Revenue Section), Darbhanga House, Ranchi or at the Office of the Deputy Commissioner, Hazaribagh (Bihar) or at the Office of the Coal Controller, 1, Council House Street, Calcutta.

All persons interested in the lands mentioned in the said Schedule shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Revenue Officer of the National Coal Development Corporation Limited, Darbhanga House, Ranchi within ninety days from the date of publication of this notification.

SCHEDULE

Urimari Block

(South Karanpura Coalfield)

Drawing No. Rev/37/67

Dated 27-11-67.

(Area notified for prospecting)

| Sl. No. | Village | Thana | Thana No. | District | Area | Remarks |
|---------|---------|-----------|-----------|--------------|-------------------------------------|---------|
| 1 | Ango | Barkagaon | 97 | Hazaribagh | | Part |
| 2 | Aswa | " | 153 | " | | " |
| 3 | Potanga | " | 154 | " | | " |
| 4 | Urimari | " | 155 | " | | " |
| 5 | Jarjara | " | 156 | " | | " |
| 6 | Garsula | " | 157 | " | | " |
| | | | | Total area : | 3840 acres (Approx.) | |
| | | | | | or 1555.20 Hectares (Approximately) | |

Boundary Description :—

A—B Line starts from the left bank of River Damodar and goes upto Central line of River Damodar in village Ango and meets at point 'B'.

B—C Line passes along the Central line of River Damodar i.e. along the part Southern boundary of village Ango, Southern boundary of villages Aswa, Potanga, Urimari and part Southern boundary of village Garsula and meets at point 'C'.

C—D—A Lines pass through villages Garsula, Jarjara Urimari, Potanga, Aswa and Ango and meet at point 'A'.

[No. C2-12(1)/68.]

ERRATA

New Delhi, the 31st July 1968

S.O. 2834.—In the notification of the Government of India in the Ministry of Steel, Mines and Metals (Department of Mines and Metals) No. S.O. 1895, dated the 21st May 1968 published in Part II, Section 3, sub-section (ii) of the Gazette of India, dated the 1st June, 1968, at pages 2586 to 2587 :—

at page 2586—

- (i) in line 26, for "Fhariacoalfield", read "Jharlia Coalfield";
- (ii) in line 38, for "21(P)", read "211(P)";
- (iii) in line 40, for "Fogidi", read "Jogidi";
- (iv) in line 46, for "8815(P)", read, "815(P)";
- (v) in line 47, for "98(P)", read "898(P)".

[No. C2-20(5)/65-1.]

New Delhi, the 8th August 1968

S.O. 2835.—In the notification of the Government of India in the Ministry of Steel, Mines and Metals (Department of Mines and Metals) S.O. No. 2033, dated the 25th May 1968, published at

pages 2731 to 2734 in Part-II, Section 3, Sub-section (ii) of the Gazette of India, dated the 8th June, 1968:—

1. At page 2731, in line 32, for "Faaria coalfield" read "Jharia coalfield";
2. at page 2732—
 - (i) in line 3, for "717(P)" read "727(P)";
 - (ii) in line 8 for "Fatudih", read "Jatudih";
 - (iii) in line 25, in the first column, for "F", read "E-F";
 - (iv) in line 26, for "714", read "744";
 - (v) in line 35, for "Ore", read "bore";
 - (vi) in line 44, for "578(P)" read "578";
 - (vii) in line 47, for "716(P)" read "716"; and for "718719(P)", read "718, 719(P)";
3. at page 2733—
 - (i) in line 4, for "line through plot numbers", read "line passes through plot numbers";
 - (ii) in line 12 for "Sub-Block-II" read "Sub-Clock-II";
 - (iii) in line 31, for "Fogidi", read "Jogidi";
 - (iv) in line 41, for "673(P)", read "673";
 - (v) in line 46, for "242(P)" read "242";
 - (vi) in line 49, for "04(P)", read "64(P);
 - (vii) in line 50, for "L4", read "274(P)";
4. at page 2734—
 - (i) in line 1, for "Fatudih", read "Jatudih";
 - (ii) in line 4, for "174(P) to 247" read "174 to 247";
and for "542(P) to 562" read "542 to 562";
 - (iii) in line 7, for "8 to 166", read "1 to 166";
 - (iv) in line 8, for "Farma", read "Jarma";
 - (v) in line 15, for "Jarudih", read "Jatudih";
 - (vi) in line 35, for "dated 20-1964" read "dated 20-1-1964";
 - (vii) in line 37, for "u/s vide 9", read "u/s 9 vide";
 - (viii) in line 40, for "918,922, 923", read "918,923,922,923".

[No. C2-20(12)/64.]

RAM SAHAY, Under Secy.

MINISTRY OF HEALTH, FAMILY PLANNING & URBAN DEVELOPMENT

New Delhi, the 3rd August 1968

S.O. 2836.—In exercise of the powers conferred by the proviso to Article 309 and, in relation to persons serving in the Indian Audit and Accounts Department also by clause (5) of Article 148 of the Constitution, the President, after consultation with the Comptroller and Auditor-General, hereby makes the following amendment in the Central Services (Medical Attendance) Rules, 1944, namely:—

1. (1) These rules may be called the Central Services (Medical Attendance) Amendment Rules 1968.
- (2) They shall come into force on the date of their publication in the official Gazette.

2. In rule 5 of the Central Services (Medical Attendance) Rules, 1944, to sub-rule (I), the following proviso shall be added, namely:—

"Provided that where such specialist or other medical officer is within the District, the approval of the Principal Medical Officer/Chief Medical Officer/Civil Surgeon of the District shall be sufficient."

[No. F.29-78/67-MA.]

R. MURTHI, Under Secy.

स्वास्थ्य, परिवार नियोजन एवं नगर विकास मंत्रालय
(स्वास्थ्य एवं नगर विकास विभाग)

नई दिल्ली, 3 अगस्त 1968

एस० ओ० 2837.—संविधान के अनुच्छेद 309 के परन्तुक द्वारा तथा भारतीय लेखा परीक्षा एवं लेखा विभाग में काम करने वाले व्यक्तियों के बारे में भी संविधान के अनुच्छेद 148 के खण्ड (6) के द्वारा मिली शक्तियों का प्रयोग करते हुए राष्ट्रपति नियंत्रक एवं महालेखापरीक्षक से परामर्श करने के पश्चात् एतद्वारा राष्ट्रीय सेवा (चिकित्सा सहयोग) नियम, 1944 में निम्नलिखित संशोधन करते हैं ; नामतः :

1. (1) ये नियम केन्द्रीय सेवा (चिकित्सा सहायता) संशोधन नियम, 1968 कहे जावें ।

(2) सरकारी राजपत्र में प्रकाशित हो जाने की तिथि से ये नियम लागू होंगे ।

2. केन्द्रीय सेवाएं (चिकित्सा सहायता) नियम, 1944 के नियम 5 के उप-नियम (1) में निम्नलिखित परन्तुक जोड़ दिया जायेगा ; नामतः :

“वर्षों जहाँ ऐसा विशेषज्ञ अथवा अन्य चिकित्सा अधिकारी जिले में ही हो वहाँ उस जिले के प्रधान चिकित्सा अधिकारी, ज्य चिकित्सा अधिकारी सिविल सर्जन की अनुमति लेना पर्याप्त होगा ।

राम मूर्ति, अवसर सचिव ।

[सं० प० 29-78/67-चिकित्सा] अनुदान

MINISTRY OF PETROLEUM & CHEMICALS

(Department of Petroleum)

New Delhi, the 3rd August 1968

S.O. 2838.—In pursuance of clause (a) of section 2 of the Petroleum Pipelines Acquisition of Right of User in Land Act, 1962 (50 of 1962), and in modification of the Notifications of the Government of India in the Ministry of Mines and Fuel S.O. No. 1131 dated the 6th April, 1963 and in the Ministry of Petroleum and Chemicals S.O. No. 2170 dated the 26th June, 1965 the Central Government hereby authorises Shri S.C.D. Kaushik, to perform the functions of the competent authority w.e.f. 1-7-68 under the said Act vice Shri Hari Dat Singh as in the schedule given below:—

SCHEDULE

| Name of the Person | Address | Territorial Jurisdiction |
|---------------------------------------|--|--------------------------|
| Shri S.C.D. Kaushik, Liaison Officer. | M/s. Indian Oil Corporation Ltd. (Pipe lines) P.B. No. 58, Allahabad (U.P.). | State of Uttar Pradesh. |

[No. 31/6/63-ONG/IOC (Vol. II).]

New Delhi, the 7th August 1968

S.O. 2839.—Whereas by a notification of the Government of India in the Ministry of Petroleum & Chemicals S.O. No. 1725 dated 7th May, 1968 under sub-section (1) of Section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government declared its intention to acquire the

Right of User in the lands specified in the schedule appended to that notification for the purpose of laying pipelines.

And whereas the competent authority has under sub-section (1) of section 6 of the said Act, submitted report to the Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the right of user in the lands specified in the schedule appended to this notification.

Now, whereas, in exercise of the power conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the said lands specified in the schedule appended to this notification is hereby acquired for laying the pipelines and in exercise of the powers conferred by sub-section (4) of that section, the Central Government directs that the right of user in the said lands shall instead of vesting in the Central Government, vest on this date of the publication of this declaration in the Oil & Natural Gas Commission free from all encumbrances.

(Laying pipeline from well No. 80 to G.G.S. II)

SCHEDULE

State—Gujarat

Dist.—Mehsana

Taluka—Kalol

| | Village | S. No. | Hectare | Area | P. Area. |
|------|---------|------------------------|---------|------|----------|
| Saij | . | 798 | 0 | 17 | 87 |
| " | . | 797/1 | 0 | 3 | 84 |
| " | . | 797/2 | 0 | 3 | 74 |
| " | . | 799 | 0 | 1 | 91 |
| " | . | 801 | 0 | 4 | 08 |
| " | . | V. P. Road | 0 | 1 | 70 |
| " | . | 797/1 | 0 | 3 | 74 |
| " | . | 762 & 761 | 0 | 26 | 34 |
| " | . | 760 | 0 | 9 | 20 |
| " | . | 759 | 0 | 8 | 53 |
| " | . | 749 | 0 | 7 | 78 |
| " | . | 748/2 | 0 | 0 | 56 |
| " | . | 748/1B | 0 | 7 | 28 |
| " | . | 748/1A | 0 | 9 | 33 |
| " | . | 742 | 0 | 18 | 43 |
| " | . | V. P. Saij Cart Track. | 0 | 0 | 56 |
| " | . | 732/1 | 0 | 1 | 1 |
| " | . | 732/2 | 0 | 10 | 72 |
| " | . | 732/3 | 0 | 1 | 11 |
| " | . | 733 | 0 | 3 | 84 |
| " | . | 734/2 | 0 | 3 | 44 |
| " | . | 730 | 0 | 34 | 77 |
| " | . | 734/1 | 0 | 1 | 1 |
| " | . | 712 | 0 | 26 | 40 |

(Laying Pipeline from well No. 16 to G.G.S. II)

| | | | | | |
|------|---|------------|---|----|----|
| Saij | . | 1217 | 0 | 10 | 92 |
| " | . | 1219 | 0 | 19 | 32 |
| " | . | V. P. Road | 0 | 6 | 76 |
| " | . | 1214/1 | 0 | 7 | 28 |
| " | . | 1213/2 | 0 | 3 | 44 |
| " | . | 1213/1 | 0 | 3 | 34 |
| " | . | 1212 | 0 | 4 | 45 |
| " | . | 1216 | 0 | 5 | 94 |
| " | . | V. P. Saij | 0 | 16 | 49 |
| " | . | 700/1 | 0 | 15 | 18 |
| " | . | 700/2 | | | |
| " | . | 700/3 | | | |

| | 1 | 2 | 3 | 4 | 5 |
|---|-----------|-------------------------|---|----|----|
| (Laying Pipeline from well No. 77 to G.G.S. II) | | | | | |
| Saij | | 712 | 0 | 15 | 06 |
| (Laying Pipeline from D.S.K. 91 to G.G.S. II) | | | | | |
| Dhanaj | | V. P. Dhanaj cart track | | 1 | 31 |
| " | | 212 | 0 | 5 | 40 |
| " | | 39 | 0 | 26 | 25 |
| " | | 224 | 0 | 10 | 65 |

[No. 29/9/68-IOC.]

CORRIGENDA

New Delhi, the 31st July 1968

S.O. 2840.—In the notification published as S.O. No. 2364 on page 3246 in part II Section 3(ii) of the Gazette of India dated 6-7-68 the following correction is notified :—

In line 5 of the last para for Section 6(1) *Read* Section 6(4).

[No. 31(38)/63-ONG/IOC (Vol. 7).]

S.O. 2841.—In the notification published as S.O. No. 1905 on page 2591 in part II Section 3(ii) of the Gazette of India dated 1-6-68, the following correction is notified :—

In line 1 of the last para for Section 6(1) *Read* Section 6(4).

[No. 31/67/63-ONG/IOC (Vol. 7) (iii).]

New Delhi, the 1st August 1968

S.O. 2842.—In the notification published as S.O. 2016 on page 2720-21 in part II Section 3(ii) of the Gazette of India dated 8-6-1968, the following correction is notified :—

In line 5 of the last para for Section 6(1) *Read* Section 6(4).

[No. 31(41)/64-Prod/IOC. (Vol. II).]

S.O. 2843.—In the notification published as S.O. 1633 on page 2187-88 in part II Section 3(ii) of the Gazette of India dated 11-5-1968, the following correction is notified :—

In line 5 of the last para for Section 6(1) *Read* Section 6(4).

[No. 31(41)/64-ONG/PROD/IOC.]

S.O. 2844.—In the notification published as S.O. 2100 on page 2965 in Part II Section 3(ii) of the Gazette of India dated 15-6-68, the following correction is notified :—

In line 5 of the last para for Section 6(1), *Read* Section 6(4).

[No. 31(41)/64-ONG/PROD/IOC.]

S.O. 2845.—In the notification published as S.O. 2363 on page 3245 in Part II Section 3(ii) of the Gazette of India dated 6-7-68, the following correction is notified :—

In line 5 of the last para for Section 6(1) *Read* Section 6(4).

[No. 31(41)/64-ONG/PROD/IOC.]

New Delhi, the 2nd August 1968

S.O. 2846.—In the notification published as S.O. No. 1903 on page 2590 in Part II Section 3(ii) of the Gazette of India dated 1-5-68 the following correction is notified :—

In line 5 of the last para for Section 6(1) *Read* Section 6(4).

[No. 31/67/63-ONG/IOC (Vol. 7) (i).]

S.O. 2847.—In the notification published as S. O. No. 1934 on page 2590-91 in Part II Section 3(ii) of the Gazette of India dated 1-6-68 the following correction notified :—

In line 3 of the last para for Section 6(1) Read Section 6(4).

[No. 31/67/63-ONG/IOC (Vol. 7) (ii)]

ERRATUM

New Delhi, the 5th August 1968

S.O. 2848.—In the notification of Government of India in the Ministry of Petroleum & Chemicals S.O. No. 368 dated 1-2-1965 published in the Gazette of India Part II Section 3, Sub-section (ii) dated the 13th February, 1965 at page 639, for S. No. "175" of village Kamod read "157".

[No. 31(41)/64-Prod/IOC (Vol. II)]

R. S. GOPALAN, Under Secy.

(Department of Chemicals)

New Delhi, the 8th August 1968

S.O. 2849.—In pursuance of sub-clause (2) of clause 11 of the Molasses Control Order 1961, the Central Government hereby directs that the provisions of sub-clause (1) of the said clause shall come into force in the State of Madras with effect from the 26th day of August, 1968.

[No. 4/19/68/Ch. I]

R. J. BHOJWANI, Under Secy.

MINISTRY OF RAILWAYS

(Railway Board)

New Delhi, the 9th August 1968

S.O. 2850.—In exercise of the powers conferred by section 85 of the Indian Railways Act, 1890 (9 of 1890), read with the notification of the Government of India, in the late Department of Commerce and Industry No. 801 dated the 24th March, 1905, the Railway Board hereby makes the following amendments in the Rules for the preparation of accident returns, published with the notification of the Government of India in the Ministry of Railways (Railway Board) No. S.O. 3312 dated the 31st August, 1964, namely :—

In the said rules,—

(a) in rule (4), under the heading "II. Accidents to be included for the purpose of these Statistics", for paragraph (v), the following paragraph shall be substituted, namely :—

"(v) While reporting the number of accidents, the figures should be given irrespective of the number of casualties of persons or cattle caused by each particular accident, which should be separately stated. Similarly, the number of collisions and derailments should be shown irrespective of the vehicles damaged or derailed by such collisions or derailments. Each accident must be shown only once, and in the event of an accident falling in more than one category, it should be treated as an accident in the higher category."

(b) in the Statement of Accidents, in Table I, (i) for the remarks under the main heading "A TRAIN ACCIDENTS," the following shall be substituted, namely :—

"(The train accidents and train kilometres hereunder refer to all traction trains, viz., steam, diesel or electric passenger, mixed, goods and departmental trains as well as the electric multiple unit trains as they are run, and also the rail cars. Train derailments or serious damages to trains occurring due to train wrecking, i.e., as a result of wilful obstruction or tampering with permanent way formation, structures or equipment should be shown separately under sub-item 2.03)."

(ii) for the remarks under the heading "Accidents involving Trains at Level Crossing", the following shall be substituted, namely:—

"(To include trains running into road traffic and/or road traffic running into trains at level crossings. Accidents at level crossings not involving trains will be accounted for under miscellaneous accidents as item 20)."

[No. 67/Stat.1/32/10.]

C. S. PARAMESWARAN, Secy.

MINISTRY OF INDUSTRIAL DEVELOPMENT & COMPANY AFFAIRS

(Department of Industrial Development)

ORDERS

New Delhi, the 8th August 1968

S.O. 2851.—IDRA/5.—In exercise of the powers conferred by section 5 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), read with rule 8 of the Central Advisory Council (Procedural) Rules, 1952, the Central Government hereby appoints Shri G.L. Mehta to be member of the Central Advisory Council of Industries till the 3rd November, 1969, in place of Shri P.L. Tandon and directs that the following amendment shall be made in the Order of the Government of India in the Ministry of Industrial Development and Company Affairs (Department of Industrial Development) No. S.O. 4044, dated the 4th November, 1967, namely:—

In the said Order, for entry No. 13 relating to Shri P.L. Tandon, the following entry shall be substituted:—

"13. Shri G.L. Mehta,
Chairman,
The Industrial Credit and Investment Corporation of India Limited,
163, Back Bay Reclamation,
Bombay-1."

[No. F. 1(5)Lic.Pol./67]

New Delhi, the 9th August 1968

S.O. 2852.—15/IDRA/68.—Whereas the Central Government is of the opinion that there has been, or is likely to be a substantial fall in the volume of production in respect of cotton textiles manufactured in the Industrial undertaking known as the Ahmedabad New Textile Mills Co. Ltd Ahmedabad; for which, having regard to the economic conditions prevailing, there is no justification,

Now, therefore, in exercise of the powers conferred by Section 15 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby appoints, for the purpose of making full and complete investigation into the circumstances of the case, a body of persons consisting of:

- | | | | | | | | |
|---------------------------|---|---|---|---|---|---|-------------------|
| 1. Shri S. V. Kogekar | . | . | . | . | . | . | Chairman |
| 2. Shri M. G. Mirchandani | . | . | . | . | . | . | Member |
| 3. Shri R. G. Zalani | . | . | . | . | . | . | Member |
| 4. Shri A. R. Kher | . | . | . | . | . | . | Member |
| 5. Shri B. D. Mukherjee | . | . | . | . | . | . | Member-Secretary. |

[No. 9(10) Lic. Pol./68]

New Delhi, the 17th August 1968

S.O. 2853.—IDRA/6/6/68.—In exercise of the powers conferred by Section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) read with rules 2, 4 and 5 of the Development Councils (Procedural) Rules, 1952, the Central Government hereby appoints, for a period of two years with effect from the date of this Order, the following persons to be members of the Development Council for the scheduled industries engaged

in the manufacture or production of Drugs and Pharmaceuticals, in place of members appointed under the Government of India in the late Ministry of Industry Order No. S.O. 1435 IDRA/6/1/66, dated the 7th May, 1966, as amended from time to time, whose tenure of office has expired by efflux of time or otherwise:—

Development Council for Drugs and Pharmaceuticals

1. Shri A. V. Mody, Managing Director, M/s. Unichem Laboratories Ltd., 22, Bhulabhai Desai Road, Bombay-26.—Chairman.
2. Shri Keith C. Roy, Managing Director, M/s. Merck Sharp & Dhome of India Ltd., Dugal House, Backbay Reclamation, Bombay-1.
3. Dr. K. A. Hamid, Managing Director, M/s. CIPLA, 289, Bellasis Road, Bombay-1.
4. Dr. D. V. K. Raju, Managing Director, M/s. Crookes Interfran Ltd., 254-D, Dr. Annie Besant Road, Worli, Bombay-12. 28-DD.
5. Shri N. M. Shah, M/s. Atul Drug House, 85, Dr. Annie Besant Road, Worli, Bombay.
6. Dr. J. N. Banerjee, Director, M/s. Sandoz (India) Ltd., Sandoz House, Worli, Bombay-18.
7. Dr. N. Rengaswami, Chief Analyst, M/s. Glaxo Laboratories (India) Private Ltd., Dr. Annie Besant Road, Worli, Bombay-18.
8. Dr. S. K. Mehta, Chief Chemist, M/s. Boehringer Knoll Ltd., United India Building, Pheroze Shah Road, Bombay-1.
9. Dr. S. Rohtagi, M/s. Hind Chemicals Ltd., M/336, Rail Bazar, Kaupur.
10. Bhai Mohan Singh, Chairman & Chief Executive, M/s. Ranbaxy Laboratories (Private) Ltd., Okhla, New Delhi.
11. Prof. Rangaswamy, Deptt. of Chemistry, University of Delhi, Delhi.
12. Shri Rattanlal Gupta, 1424, Chandni Chowk, Delhi.
13. Dr. B. N. Ghosh, Managing Director, M/s. Bengal Chemicals & Pharmaceuticals Works Ltd., 6, Ganesh Chunder Avenue, Calcutta-13.
14. Shri M. S. Shastri, Chief Executive, M/s. Synbiotics Ltd., Wadi Wadi, Baroda.
15. Shri C. S. Raju, M/s. South India Research Institute (P) Ltd., Srinagar, Vijayawada (Andhra Pradesh).
16. Dr. J. J. Neuruker, M/s. Sunneeta Laboratories, 89-B/90, Industrial Estate, Indore (M.P.).
17. Shri C. A. Subramanyam, Managing Director, M/s. Hindustan Antibiotics Ltd., Pimpri, Poona.
18. Shri Inderjit Singh, Chairman & Managing Director, M/s. Indian Drugs & Pharmaceuticals Ltd., N-12, South Extension Part (I), New Delhi-3.
19. Dr. B. B. Sarkar, Director of Drugs Control Administration, West Bengal, Calcutta.
20. Dr. S. B. Rao, Managing Director, M/s. Navrathna Pharmaceuticals, Cochin (Kerala).
21. Shri M. L. Dhar, Director, Central Drug Research Institute, Lucknow.
22. Dr. Shanti Patel, Kamgar Sadan, Nawab Tank Road, Mezgaon, Bombay.
23. Dr. B. Shah, Industrial Adviser, Dte. General of Technical Development, New Delhi.
24. Shri P. S. Ramachandaran, Drugs Controller, Ministry of Health, New Delhi.
25. Shri S. Sundararajan, Deputy Secretary, Ministry of Petroleum & Chemicals, New Delhi.

26. Brig. N. K. Mitra, Dy. Director General (Equipment & Stores), Armed Forces Medical Services, Ministry of Defence, New Delhi.

27. Dr. G. P. Kane, Officer on Special Duty, Ministry of Industrial Development & Company Affairs, (Department of Industrial Development), New Delhi.

28. Dr. P. R. Gupta, Development Officer, Dte. General of Technical Development, New Delhi.

2. Dr. P. R. Gupta, Development Officer, D.G.T.D., New Delhi, is hereby appointed ~~also~~ carry on the functions of the Secretary to the said Development Council.

[No. 13(1)/68-L.C.]

R. C. SETHI, Under Secy.

(Department of Industrial Development)
(Indian Standards Institution)

New Delhi, the 31st July 1968

S. O. 2854.—In exercise of the powers conferred on me under sub-regulation (4) of regulation 3 of the Indian Standards Institution (Certification Marks), Regulations, 1955, as amended from time to time, modifications to the provisions of the Indian Standard, details of which are mentioned in the Schedule given hereafter, have tentatively been made with a view to expediting the use of the Standard Mark, without in any way affecting the quality of goods covered by the relevant standard.

THE SCHEDULE

| Serial No. | No. and Title of Indian Standard, the provisions of which have been modified. | Particulars of the existing provisions | Particulars of the modifications made to the provisions | Date from which the modifications shall come into force. |
|------------|---|--|---|--|
| (1) | (2) | (3) | (4) | (5) |
| | IS 1989—1967 Specification for Miners Safety Leather Boots and Shoes. | Clause 8·3 relating to weight of boots | In clause 8·3, line 2—Read '1750 g' for '1600 g'. | 22 July 1968. |

[No. CMD/13:4]
(DR) A. N. GHOSH,
Director General.

(Department of Industrial Development)



(Indian Standards Institution)






New Delhi, the 8th August 1968




S.O. 2855.—In partial modification of the then Ministry of Industry notification, published in the Gazette of India, Part II, Section 3(ii) dated 5 September 1964 under number S.O. 3006 dated 25 August 1964, the Indian Standards Institution hereby notifies that the standard mark for vitreous sanitary appliances (vitreous china) has been revised. The revised designs of the standard marks together with the titles of the relevant Indian Standards and verbal description of the designs are given in the following schedule.

These standard marks for the purpose of the Indian Standards Institution (Certification Marks) Act, 1952 and the rules and regulations framed thereunder shall come into force with effect from 25 July 1968:

THE SCHEDULE

| Sl. No. | Design of the Standard Mark | Product/Class of Products to which applicable | No. & Title of Relevant Indian Standard | Verbal description of the design of the Standard Mark |
|--|---|---|--|--|
| 1 | 2 | 3 | 4 | 5 |
| 1 | IS:2556  Part I— | Vitreous sanitary appliances (general requirements) | IS: 2556 (Part I)—1967 Specification for vitreous sanitary appliances (vitreous china) Part I General requirements (<i>first revision</i>) | The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in col (2), the number, designation of the Indian Standard being superscribed on the top side and the relevant Part No. being subscribed under the bottom side of the monogram as indicated in the design. |
| 2 | IS:2556  Part II— | wash down water-closets | IS: 2556 (Part II)—1967 Specification for vitreous sanitary appliances (vitreous china) | Do. |
| Part II Specific requirements of wash down water-closets (<i>first revision</i>) | | | | |

| | | | | |
|---|--|--------------------------|--|--|
| 3 | IS: 2556 | Squatting pans and traps | IS: 2556 (Part III)—1967 Specification for vitreous sanitary appliances (vitreous china) Part III Specific requirements of squatting pans and traps (<i>first revision</i>) | The monogram of the Indian Standards Institution, consisting of letters 'ISI', drawn in the exact style and relative proportions as indicated in col (2), the number, designation of the Indian Standard being superscribed on the top side and the relevant Part No. being subscribed under the bottom side of the monogram as indicated in the design. |
| |  | Part III | | |
| 4 | IS: 2556 | Wash basins | IS: 2556 (Part IV)—1967 Specification for vitreous sanitary appliances (vitreous china) Part IV Specific requirements of wash basins (<i>first revision</i>) | Do. |
| |  | Part IV | | |
| 5 | IS: 2556 | Laboratory sinks | IS: 2556 (Part V)—1967 Specification for vitreous sanitary appliances (vitreous china) Part V Specific requirements of laboratory sinks (<i>first revision</i>) | Do. |
| |  | Part V | | |
| 6 | IS: 2556 | Urinals | IS: 2556 (Part VI)—1967 Specification for vitreous sanitary appliances (vitreous china) Part VI Specific requirements of urinals (<i>first revision</i>) | Do. |
| |  | Part VI | | |
| 7 | IS: 2556 | Half-round channel | IS: 2556 (Part VII)—1967 Specification for vitreous sanitary appliances (vitreous china) Part VII Specific requirements of half-round channel (<i>first revision</i>) | Do. |
| |  | Part VII | | |

| 1 | 2 | 3 | 4 | 5 |
|----|--|----------------------------------|---|--|
| 8 | IS: 2556  Part VIII | Siphonic wash-down water closets | IS: 2556 (Part VIII)—1967 Specification for vitreous sanitary appliances (vitreous china) Part VIII Specific requirements of siphonic wash-down water closets (first revision) | The monogram of the Indian Standards Institution, consisting of letters 'ISI' drawn in the exact style and relative proportions as indicated in col (2), the number designation of the Indian Standard being superscribed on the top side and the relevant Part No. being subscribed under the bottom side of the monogram as indicated in the design. |
| 9 | IS: 2556  Part IX | Bidets | IS: 2556 (Part IX)—1967 Specification for vitreous sanitary appliances (vitreous china) Part IX Specific requirements of bidets (first revision) | Do. |
| 10 | IS: 2556  Part X | Foot rests | IS: 2556 (Part X)—1967 Specification for vitreous sanitary appliances (vitreous china) Part X Specific requirements of foot rests (first revision) | Do. |

[No. CMD/13 : 9.]

(DR.) SADGOPAL,
Deputy Director General.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 25th July 1968

S.O. 2856.—In exercise of the powers conferred by sub-section (1) of section 3 of the Cinematograph Act, 1952, read with rule 4 of the Cinematograph (Censorship) Rules, 1958, the Central Government hereby appoints Shri A. L. Srinivasan as a member of the Central Board of Film Censors with immediate effect.

[No. F. 11/8/67-F(C).]

H. B. KANSAL, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 25 जुलाई, 1968

एस० ओ० 2857.—सिनेमाटोग्राफ (सेन्सरशिप) रूल, 1958 के नियम 4 के साथ पठित सिनेमाटोग्राफ एक्ट, 1952, की धारा 3 की उपधारा (1), के अन्तर्गत प्रदत्त शक्तियों के अनुसार, भारत सरकार श्री ए० एल० श्रीनिवासन को अभी से केन्द्रीय फ़िल्म सेन्सर बोर्ड का सदस्य नियुक्त करती है ।

[संख्या 11/8/67-एफ(सी०).]

हरि बाबू कंसल, अव्वर सचिव ।

ORDERS

New Delhi, the 3rd August 1968

S.O. 2858.—In pursuance of the directions issued under the provisions of the enactments specified in the First Schedule annexed hereto the Central Government after considering the recommendations of the Film Advisory Board, Bombay, hereby approves the films specified in column 2 of the Second Schedule annexed hereto in Marathi and Hindi language versions to be of the description specified against it in column 6 of the said Second Schedule.

THE FIRST SCHEDULE

(1) Sub-Section (4) of the Section 12 and Section 16 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952).

(2) Sub-Section (3) of Section 5 and Section 9 of the Bombay Cinemas (Regulation) Act, 1953 (Bombay Act XI of 1953).

THE SECOND SCHEDULE

| Sl. No. | Title of the film | Length 35 mm | Name of the Applicant | Name of the Producer | Whether a scientific or a film intended for educational purposes or a film dealing with news and current events or a documentary film. |
|---------|---------------------------|-----------------|--|-------------------------|--|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | Maharashtra News No. 194. | 283.00 M | Director of Publicity, Govt. of Maharashtra, Bombay. | | Film dealing with news and current events (For release in Maharashtra Circuit only). |

New Delhi, the 8th August 1968

S.O. 2859.—In pursuance of the directions issued under the provision of each of the enactments specified in the First Schedule annexed hereto, the Central Government after considering the recommendations of the Film Advisory Board, Bombay hereby approves the film specified in column 2 of the Second Schedule annexed hereto in Gujarati to be of the description specified against it in column 6 of the said Second Schedule.

THE FIRST SCHEDULE

- (1) Sub-Section 4 of the Section 12 and Section 16 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952).
- (2) Sub-Section 3 of Section 5 and Section 9 of the Bombay Cinemas (Regulation) Act, 1953 (Bombay Act XVII of 1953).
- (3) Sub-Section (4) of Section 5 and Section 9 of the Saurashtra Cinemas (Regulation) Act, 1953 (Saurashtra Act XVII of 1953).

THE SECOND SCHEDULE

| Sl. No. | Title of the film | Length 35mm | Name of the Applicant | Name of the Producer | Whether a scientific film or a film intended for educational purposes or a film dealing with news and current events or a documentary film |
|---------|---------------------|-------------|---|----------------------|--|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | Mahitichitra No. 97 | 167.64 M | Director of Information, Government of Gujarat, Ahmedabad-15. | | Film dealing with News and current events (For release in Gujarat circuit only). |

[No. F. 24/1/68-FP. App. 1278.]

BANU RAM AGGARWAL, Under Secy

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 1st August 1968

S.O. 2860.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Chandigarh, in the industrial dispute between the employers in relation to the Caledonian Insurance Company, New Delhi and their workmen, which was received by the Central Government on the 20th July, 1968.

BEFORE SHRI ISHWAR DAS PAWAR, INDUSTRIAL TRIBUNAL, GOVERNMENT OF INDIA, CONSTITUTED UNDER CLAUSE (D) SUB-SECTION (1) OF SECTION 10 OF THE INDUSTRIAL DISPUTES ACT.

REFERENCE NOS. 2/c AND 6/c.

In the matter of Industrial Dispute

BETWEEN

The workmen and the management of M/s. Caledonian Insurance Company, New Delhi.

PRESENCE: Shri K. K. Khullar and Shri P. C. Bose—for the management.
Shri Madan Mohan—for the workmen.

AWARD

By virtue of an order dated 3rd January, 1967 the Central Government referred the following items of dispute to this Tribunal. Consequent upon an industrial dispute having come into existence between the employers in relation to the Caledonian Insurance Company, New Delhi and their workmen, for adjudication:—

1. Whether the benefits of gratuity and leave given by the Caledonian Insurance Company, New Delhi to the peons and drivers employed by them need improvement?
2. If so, to what extent and from what date.

By another order of the 7th July, 1967 the Central Government further referred the following item of dispute between the same parties, to this Tribunal for adjudication:

Whether any or all of the existing conditions of service mentioned below relating to peons and drivers employed by Caledonian Insurance Company, New Delhi, need any improvement? If so, to what extent and from what date?

- (1) Pay scales;
- (2) Dearness allowance;
- (3) Overtime allowance;
- (4) Age of retirement;

In response to the notices issued to the parties they appeared before the Tribunal through their representatives and filed statements of their respective cases. The pleadings of the parties filed in both the cases give rise to the following issues:—

(REF. No. 2/C)

1. Whether the benefits of gratuity and leave given by the Caledonian Insurance Company, New Delhi to the peons and drivers employed by them need improvement?
2. If so, to what extent and from what date.
3. What is the affect on this reference of the provisions of the Delhi Shops and Establishments Act and on the claim of the workmen for improvement under the leave facilities?

(REF. No. 6/C)

1. Whether the dispute was not espoused by a sufficient number of workmen or by a union representing substantial number of workmen?
2. Whether any or all of the existing conditions of service mentioned below relating to peons and drivers employed by Caledonian Insurance Company, New Delhi, need any improvement? If so, to what extent and from what date?

- (1) Pay scales;
- (2) Dearness allowance;
- (3) Overtime allowance;
- (4) Age of retirement;

Issue No. 3 of the first reference was decided by my order dated 9th August, 1967.

On the 29th of September, 1967, the representatives of the parties made statements that the two references be taken up together as evidence in both of them was more or less common. Accordingly the two cases were ordered to be taken up together. This award will, therefore, dispose of both the references.

After evidence had been partly recorded the representatives of the parties prayed for time as the parties were negotiating for a settlement. For this purpose a few adjournments were granted and ultimately the parties succeeded in arriving at a mutual settlement on all the points involved in both the references. The settlement is Ext. AR 1 and it is signed

by Shri P. C. Bose, Branch Manager, of the Company for and on behalf of the management and by Sarvshri Ram Singh, Dalip Singh and Sham Singh for and on behalf of the workmen. The terms and conditions of this settlement are as under:—

SCALES OF PAY:

The following scales of pay are agreed w.e.f. 1st October, 1965.

(i) Peons—Rs. 30—2—40—3—70—4—90.

(ii) Drivers—Rs. 55—2—65—3—95—4—115.

Adjustment.—Employees will be fitted into the revised scales of pay and where an employee whose salary on 30th September, 1965 does not fit in a step in the new scale, he will be fitted into the new scale of basic salary at the point next above the basic salary actually drawn by him on 30th September, 1965. One *ad hoc* increment effective 1st October, 1965 will be granted. After the above adjustment, all the employees will get their usual annual increments according to the revised pay scale on and from the date they are allowed their annual increments as at present.

Dearness allowance.—It is agreed that a scheme of Dearness allowance for subordinate staff be introduced as follows w.e.f. 1st October, 1965:—

When the All-India Consumer Price Index Number Base 1949—100 is at the figure 170, the members of the subordinate staff would be paid dearness allowance of Rs. 95 per month and for every rise and fall of five points in the index figure, there would be an increase or decrease in the quantum of dearness allowance by Rs. 5.

Working hours and overtime.—It is agreed that the Peons would be required to attend the office 1/2 an hour earlier and leave 15 minutes later every day beyond the usual office hours. As such, the Peons' hours of work will be :

Mondays to Fridays—9-30 a.m. to 5-45 p.m. With one hour break for lunch.

Saturdays—9-30 a.m. to 1-45 p.m.

The working hours of the drivers will be :

9.00 a.m. to 12.30 p.m.

1.00 a.m. to 2.30 p.m.

4.00 p.m. to 7.00 p.m.

For work beyond the normal hours of work, as prescribed above, overtime allowance will be paid at the rate prescribed in the Delhi Shops and Establishments Act but for the purposes of calculation of overtime, a cushion period of 15 minutes would be deducted before overtime can be claimed and no overtime will be payable for this cushion period, on that particular day.

Medical Aid.—The company agrees to reimburse on production of a medical certificate and/or the receipts for prescriptions prescribed by a registered doctor, an amount upto but not exceeding Rs. 75 in any one year. It is clearly understood that this benefit will apply only to the employee himself. It is also agreed that as a special case Shri Sham Singh would be re-imbursed an amount for which he has already submitted medical bills.

Gratuity.—Effective 1st October, 1965—gratuity will be paid to permanent members of the subordinate staff who are subscribers to the Provident Fund (excluding part-time or temporary employees), subject in all cases to a maximum of 15 months' last basic salary at the following rates:—

(i) On normal retirement or reaching the age of superannuation, or at death, or on permanent total incapacity at the rates of one month's last basic salary for every year of service completed with the company.

(ii) Subject to an employee completing ten years of service with the company, on retrenchment (where retrenchment compensation is payable under the Industrial Disputes Act) at the rate of half a month's last basic salary for every completed year of service with the company.

(iii) No gratuity will be paid to an employee who is dismissed for misconduct.

(iv) On termination of service by the company for any other reason not specifically provided for above at the rate of one month's last basic salary for every completed year of service with the company.

Any gratuity payable under the above Rules plus the total amount to which the employee is entitled under the Provident Fund shall be the total retiral benefits payable by the company and there will be no other form of retrospective adjustment.

Retirement Age.—It is agreed that the age of retirement shall be 58 years and the employee concerned shall be retired on 7th April following their attainment of the age of 58. The date of birth already on records of the Company in any manner whatsoever shall be conclusive proof of age. The company retains the right to retire an employee earlier on medical grounds.

Provident Fund.—The present rules will continue.

Leave: (a) *Privilege Leave.*—Privilege leave granted will be inclusive of Saturdays and Sunday; or public holidays notified under the Negotiable Instruments Act which may intervene.

Privilege Leave Entitlement:

| | |
|-------------------|--|
| 14 days per annum | after completion of one year's service and until completion of seven years' service. |
| 21 days per annum | after completion of 7 years' service and until the completion of 15 years service. |
| 28 days per annum | after completion of 15 years' service. |

An employee may be permitted, subject to the exigencies of the office to accumulate two years' leave according to the settlement of leave entitlement specified above.

(b) *Casual-cum-sick leave:*

(i) A maximum of 12 days casual-cum-sick leave will be allowed in each calendar year to each employee with full pay (basic plus D.A.). Where casual leave is sought it shall not be granted for more than two days at a time and such leave shall not be permitted to be prefixed or suffixed to holidays or to any other kind of leave.

(ii) Where leave is sought on grounds of sickness, it will be considered only when the request is accompanied by a medical certificate from a doctor acceptable to the company.

(iii) Casual and sick leave will be non-accumulative.

Bonus.—Subject to any prohibition of the Government of India, a permanent employee in the service of the company at the time Bonus is paid will be entitled to a bonus each year equivalent to one and a half month's basic salary, except where such employee has not completed one years service as at the time of payment when the Bonus shall be paid on a *pro rata* basis for the period commencing from the date of his appointment upto 31st December. Where a probationer is in the service of the Company at the time of the payment of the Bonus but has not been confirmed, on subsequent confirmation before 31st December in that year he will be entitled to receive a *pro rata* bonus at that time calculated from the date of his first appointment to the 31st December.

Uniform.—The present practice will continue.

Confirmation:

(a) *Temporary staff.*—To temporary employees who have been engaged for work which is of essentially a temporary nature likely to be finished within a limited period, none of the benefits under this agreement will apply. Both the parties agree that temporary employees if any will be confirmed on completion of six months' continuous service and they would be entitled to benefits under this settlement on confirmation.

(b) *Probationers.*—In the case of employees appointed on probation, the probationary period would be maximum for six months.

All other demands mentioned in the charter of demands are deemed to be settled.

It is agreed that this settlement is a settlement under section 2(P) of the Industrial Disputes Act, 1947. In consideration of the demands settled by the management the employees agree that they shall not make any demand involving any financial burden and implication on the company during the period this settlement is in operation.

It is agreed that this settlement shall remain in force for a minimum period of two years from the date of signing i.e. 22nd June, 1968 and shall continue to remain in operation even thereafter unless terminated by either party by giving the other party two calendar months written notice of its intention to terminate the settlement in accordance with law.

Hence I give an award in terms of the settlement reproduced above.

There shall be no order as to costs.

Dated, the 16th July, 1968.

(Sd.) ISHWAR DAS PAWAR,
Industrial Tribunal,
Government of India, Chandigarh.

[No. 70(1)/66-LRIV.]

ORDERS

New Delhi, the 1st August 1968

S.O. 2861.—Whereas the applications, specified in the Schedule hereto annexed, under subsection (2) of section 33C of the Industrial Disputes Act, 1947 (14 of 1947) are pending before the Labour Court, Bombay;

And, whereas for the ends of justice and convenience of parties, it is necessary to transfer the proceedings to the Labour Court at Nagpur;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby withdraws the proceedings in relation to the said applications pending before the Labour Court, Bombay and transfer the same to the Labour Court, Nagpur, constituted by the notification of the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 3453 dated the 22nd September, 1967 with Shri P. D. Kulkarni as the Presiding Officer, and directs that the said Court shall proceed with the said applications from the stage at which they are transferred and dispose of the same according to Law.

| Sl. No. | Case Nos. | Name of the applicant | Remarks |
|---------|-----------------|--------------------------------|---------|
| 1 | LCB/185/67 | Shri Dhanoo Bhagoo | |
| 2 | LCB/186/67 | Shri Pratapsingh Bhikansingh | |
| 3 | LCB/187/67 | Shri Maroti Venkati | |
| 4 | LCB/188/67 | Shri H. D. Vaidya | |
| 5 | LCB/189/67 | Shri Shamsunder Mahabir Prasad | |
| 6 | LCB/190/67 | Shri Mangal Bapuna | |
| 7 | LCB/191/67 | Shri Sadhusingh Harnamsingh | |
| 8 | LCB/192/67 | Shri Abdul Wahid | |
| 9 | LCB/193/67 | Shri Shankar Sukhdeo | |
| 10 | LCB/150/67 | Shri Jogendra Singh | |
| 11 | LCB/229/67 | Shri B. K. Auglawe | |
| 12 | LCB/230/67 | Shri Mehtralall | |
| 13 | LCB/15/68 | Shri Mahadeo Mangalsingh | |
| 14 | LCB-44 of 1968 | Shri Budhulal Morilal | |
| 15 | LCB-9 of 1968 | Shri Ganru | |
| 16 | LCB-228 of 1968 | Shri A. J. Fernandes | |
| 17 | LCB-14 of 1968 | Shri Jamna Bharose and others | |

[No. 2/21/68-LRIII]

New Delhi, the 2nd August 1968

S.O. 2862.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Management of Dalmia Dadri Cement Limited, Charkh: aDadri and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, Whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7 A, and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby constitutes an Industrial Tribunal with Shri Ishwar Das Pawar as the Presiding Officer, with Headquarters at Chandigarh and refers the said dispute for adjudication to the said Tribunal.

SCHEDULE I

1. Whether the action of the management of Dalmia Dadri Cement Limited, Charkhi Dadri in stopping the following 172 workmen from work with effect from the date shown against each was justified? If not, to what relief are they entitled?

| Sl. | Name and Father's Name | Village | Date from which stopped from work |
|-----|-----------------------------|-----------|-----------------------------------|
| 1 | Ramdeva s/o Ruda | Rigas | 2-3-1968 |
| 2 | Chetu s/o Plam | Do. | Do. |
| 3 | Heera s/o Kalu | Sukhpura | Do. |
| 4 | Maida s/o Parbu | Leharwara | Do. |
| 5 | Karna s/o Parbu | Do. | Do. |
| 6 | Suwa s/o Kalu | Sukhpura | Do. |
| 7 | Ramjilal s/o Kundan | Bhawrari | Do. |
| 8 | Ratan s/o Sohan | Alisar | Do. |
| 9 | Mohan s/o Mangla | Anglai | Do. |
| 10 | Kishan s/o Sohan | Alisar | Do. |
| 11 | Birju s/o Nanu Ram | Chara | Do. |
| 12 | Bedu s/o Ruda | Rigas | Do. |
| 13 | Mandu s/o Bodu | Agilai | Do. |
| 14 | Deva s/o Bedu | Do. | Do. |
| 15 | Makhan s/o Mangla | Do. | Do. |
| 16 | Fatu s/o Kalu | Madawara | Do. |
| 17 | Narain s/o Balu | Anglai | Do. |
| 18 | Surja s/o Bagji | Mavrari | Do. |
| 19 | Surta s/o Bala | Do. | Do. |
| 20 | Jale s/o Chandgi Ram | Kubja | Do. |
| 21 | Ramadhan s/o Maru | Bhuwana | Do. |
| 22 | Rohtas s/o Udmi | Kapuri | Do. |
| 23 | Jage s/o Lila | Mavu | Do. |
| 24 | Bhagrith s/o Dalu | Rigas | Do. |
| 25 | Kalu s/o Dalu | Do. | Do. |
| 26 | Lalu s/o Sohan | Alisar | Do. |
| 27 | Mahla s/o Jhuwara | Rigas | Do. |
| 28 | Jagan s/o Bagji | Bhavatri | Do. |
| 29 | Chandu s/o Fool Singh | Do. | Do. |
| 30 | Kale s/o Nathu | Rigas | Do. |
| 31 | Sheo Ram s/o Harkaran | Madhogarh | Do. |
| 32 | Kalan s/o Sohan | Alisar | Do. |
| 33 | Duwarda s/o Foolsingh | Bhawathri | Do. |
| 34 | Puran s/o Imraj | Adepur | Do. |
| 35 | Goma s/o Mangla | Agilai | Do. |
| 36 | Chetu s/o Bhola | Regas | Do. |
| 37 | Sankar s/o Binja | Do. | Do. |
| 38 | Mansingh s/o Gopal | Mambulia | Do. |
| 39 | Tara Chand s/o Surja | Bavathri | Do. |
| 40 | Jugal s/o Mamraj | Do. | Do. |
| 41 | Sheo parshad s/o Gopalsingh | Do. | Do. |
| 42 | Bheram s/o Teja | Khanpur | Do. |
| 43 | Ramsarup s/o Searam | Jhinjher | Do. |
| 44 | Nagar s/o Nurda | Nandha | Do. |
| 45 | Richpal s/o Heera | Regas | Do. |
| 46 | Narain s/o Heera | Do. | Do. |
| 47 | Parbhat s/o Bhura | Haspur | Do. |
| 48 | Ramkishan s/o Mansingh | Leharwara | Do. |
| 49 | Rampartap s/o Dhansingh | Jhinjher | Do. |
| 50 | Randhir s/o Chandgi | Do. | Do. |

| Sl. No. | Name and Father's Name | Village | Date from which stopped from work |
|---------|-------------------------------------|-----------------|-----------------------------------|
| 51 | Chirangis s/o Kundan | Bhawathri | 2-3-1968 |
| 52 | Dayanand s/o Kundan | Do. | Do. |
| 53 | Omparkash s/o Arjan Singh | Do. | Do. |
| 54 | Bhura s/o Mohan | Majipura | 6-3-1968 |
| 55 | Jagu s/o Mohan | Do. | Do. |
| 56 | Magla s/o Nandu | Sawami ki dhani | Do. |
| 57 | Parbu s/o Baksa | Majipura | Do. |
| 58 | Sarwan s/o Nathu | Chapeli | Do. |
| 59 | Bakhtawar s/o Gopal | Samaspur | Do. |
| 60 | Hazari s/o Nathu | Chapeli | Do. |
| 61 | Mange s/o Gopal | Samaspur | Do. |
| 62 | Dunga s/o Dalu | Sawami ki dhani | Do. |
| 63 | Moti s/o Gordhan | Kundan | Do. |
| 64 | Budh Ram s/o Mohan | Majipura | Do. |
| 65 | Magu s/o Gopal | Khora | Do. |
| 66 | Bhana s/o Ganesh | Paleki dhani | Do. |
| 67 | Bhola s/o Asa | Palri | Do. |
| 68 | Parbhat s/o Lalchand | Majipura | Do. |
| 69 | Lalchand s/o Mohan | Do. | Do. |
| 70 | Moolchand s/o Lalchand | Do. | Do. |
| 71 | Karna s/o Sunda | Sunderpura | Do. |
| 72 | Sunda s/o Dula | Do. | Do. |
| 73 | Lichman s/o Sunda | Do. | Do. |
| 74 | Ganesh s/o Ladu | Buchawasi | Do. |
| 75 | Goda | Manaksas | Do. |
| 76 | Rajkaran s/o Amar Singh | Samaspur | Do. |
| 77 | Manphool s/o Chunia | Mahrana | Do. |
| 78 | Banwari s/o Chunia | Do. | Do. |
| 79 | Rampal s/o Chunia | Do. | Do. |
| 80 | Maru s/o Raje | Do. | Do. |
| 81 | Desa s/o Neki | Do. | Do. |
| 82 | Indra s/o Neki | Do. | Do. |
| 83 | Samera s/o Maru | Do. | Do. |
| 84 | Ramchandra s/o Ramjilal | Do. | Do. |
| 85 | Raisingh s/o Neki | Do. | Do. |
| 86 | Parlad s/o Ranjeet | Do. | Do. |
| 87 | Mailals s/o Sheonath | Do. | Do. |
| 88 | Mange s/o Dugar | Leharwara | Do. |
| 89 | Santu s/o Chiranjilal | Mahrana | Do. |
| 90 | Husara s/o Mahinder | Do. | Do. |
| 91 | Munsi s/o Kishanlal | Do. | Do. |
| 92 | Hanuman s/o Jhathu | Katlatial | Do. |
| 93 | Sunda s/o Gula | Do. | Do. |
| 94 | Joitha s/o Hanuman | Do. | Do. |
| 95 | Bhuru s/o Kumha | Do. | Do. |
| 96 | Ganesh s/o Kumha | Do. | Do. |
| 97 | Jhabar s/o Giga | Palri | Do. |
| 98 | Narain s/o Cheta | Baledi | Do. |
| 99 | Nandas s/o Cheta | Do. | Do. |
| 100 | Mahala s/o Sankar Budela | Budela | Do. |
| 101 | Ramesar s/o Bhagwana | Mankawas | Do. |
| 102 | Hanuman s/o Surja | Do. | Do. |
| 103 | Nanu s/o Kalu | Gerlda | Do. |
| 104 | Rameshar s/o Gula | Do. | Do. |
| 105 | Bhajna s/o Lakhma | Do. | Do. |
| 106 | Bholu s/o Chela | Biredi | Do. |
| 107 | Nihalu s/o Kharvi | Biheror | 27-2-1968 |
| 108 | Sudhan s/o Bhola | Do. | Do. |
| 109 | Maman s/o Daya Ram | Do. | Do. |
| 110 | Mange s/o Lila | Do. | Do. |
| 111 | Mathu s/o Lila | Do. | Do. |
| 112 | Balbir s/o Deena | Do. | Do. |

| Sl. No. | Name and Father's Name | Village | Date from which stopped from work |
|---------|--------------------------------------|----------|-----------------------------------|
| 113 | Ishwar s/o Sheochand | Bihror | 27-2-1968 |
| 114 | Ram Parshad s/o Puran | Do. | Do. |
| 115 | Dharma s/o Hardeva | Do. | Do. |
| 116 | Risale s/o Puran | Do. | Do. |
| 117 | Umed s/o Puran | Do. | Do. |
| 118 | Banwari s/o Daya Ram | Do. | Do. |
| 119 | Chhote s/o Balwant | Do. | Do. |
| 120 | Sadhuram s/o Hardeva | Do. | Do. |
| 121 | Partap s/o Bhaikhar | Majra | Do. |
| 122 | Sisram s/o Balwant | Bihror | Do. |
| 123 | Jailal s/o Kharvi | Do. | Do. |
| 124 | Dharam Pal s/o Sis Ram | Do. | Do. |
| 125 | Bhikhu s/o Rup Chand | Do. | Do. |
| 126 | Ram Sarup s/o Bhikhu | Do. | Do. |
| 127 | Sitar s/o Bhikhu | Do. | Do. |
| 128 | Raghubir s/o Samuh | Do. | Do. |
| 129 | Risal s/o Samuh | Do. | Do. |
| 130 | Inder s/o Mam Chand | Do. | Do. |
| 131 | Ratia s/o Juglal | Do. | Do. |
| 132 | Banwari s/o Jug Lal | Do. | Do. |
| 133 | Rameshwar s/o Ratia | Do. | Do. |
| 134 | Girdhari s/o Juglal | Do. | Do. |
| 135 | Munsis s/o Girdhari | Do. | Do. |
| 136 | Ramphal s/o Girdhari | Do. | Do. |
| 137 | Chhote Lal s/o Bihari Lal | Bhagvi | Do. |
| 138 | Chander s/o Balwant | Bihror | Do. |
| 139 | Partap s/o Chuna | Do. | Do. |
| 140 | Jage s/o Kushla | Do. | Do. |
| 141 | Kartar s/o Kushla | Do. | Do. |
| 142 | Balbir s/o Muna | Do. | Do. |
| 143 | Tare s/o Mangtoo | Do. | Do. |
| 144 | Bharthu s/o Sahia | Do. | Do. |
| 145 | Ram Kishore s/o Kanhaya | Kundrali | Do. |
| 146 | Jage s/o Nathua | Bihror | Do. |
| 147 | Santraj s/o Jage | Do. | Do. |
| 148 | Om Parkash s/o Subha Chand | Do. | Do. |
| 149 | Sher Singh s/o Bhanju | Do. | Do. |
| 150 | Ramphal s/o Subhachand | Do. | Do. |
| 151 | Rajender s/o Subhachand | Do. | Do. |
| 152 | Kundun s/o Maria | Do. | Do. |
| 153 | Vishnu s/o Bhande | Do. | Do. |
| 154 | Santu s/o Jhandu | Do. | Do. |
| 155 | Risal s/o Bhalla | Kaliawas | Do. |
| 156 | Chander s/o Siria | Do. | Do. |
| 157 | Banwari s/o Jatusana | Do. | Do. |
| 158 | Mehar Singh s/o Chhaju | Bihror | Do. |
| 159 | Jhabal s/o Giani | Do. | Do. |
| 160 | Jit s/o Dani | Do. | Do. |
| 161 | Bhagwana s/o Lal Chand | Kaliawas | Do. |
| 162 | Kartar s/o Bhagwana | Do. | Do. |
| 163 | Jagan s/o Bhuna | Bihror | Do. |
| 164 | Jegi s/o Jai Dayal | Kaliawas | Do. |
| 165 | Chandgi s/o Nana | Do. | Do. |
| 166 | Sant Lal s/o Bala | Do. | Do. |
| 167 | Subha s/o Lal Chand | Do. | Do. |
| 168 | Ratan s/o Banwari | Do. | Do. |
| 169 | Fate s/o Chandgi | Bihror | Do. |
| 170 | Ratia s/o Jugti | Do. | Do. |
| 171 | Kanhaya s/o Jugti | Do. | Do. |
| 172 | Darya s/o Subharam | Kaliawas | Do. |

New Delhi, the 12th August 1968

S.O. 2863.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Punjab National Bank Limited, 2/1, First Line Beach (Dare House Extension), Madras-1 and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by Section 7A and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal with Shri M. Tajammul Hussain as the Presiding Officer with headquarters at 1st Line Beach, Madras and refers the said dispute for adjudication to the said Industrial Tribunal.

SCHEDULE

Whether the Punjab National Bank Limited, Madras is justified in declaring Shri S. Rajagopalan, the senior most employee at Ramnathapuram as surplus and transferring him to Ambur on that account? If not, to what relief is the employee entitled?

[No. 23/45/68-LR.III.]

O. P. TALWAR, Under Secy.

(Department of Labour and Employment)

New Delhi, the 3rd August 1968

S. O. 2864.—In exercise of the powers conferred by section 73 F of the Employee's State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factory in the Schedule below in sparse area in the State of Kerala, hereby exempts the said factory from the payment of the employers' special contribution leviable under Chapter VA of the said Act until enforcement of the provisions of Chapter V of the said Act in that area;

SCHEDULE

| Sl. No. | Name of District | Name of area | Name of the factory |
|---------|------------------|--------------|----------------------------------|
| I | Trichur | Vadakumkara | M/s. Pathrose Rice and C. Mills. |

[No. F. 6(19)/68-HI]

New Delhi, the 8th August 1968

S.O. 2865.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factories mentioned in the Schedule below, in sparse areas in the State of Uttar Pradesh, hereby exempts the said factories from the payment of the employer's special contribution leviable under Chapter VA of the said Act until the enforcement of the provisions of Chapter V of the said Act in these areas.

SCHEDULE

| S. No. | Name of the Distt. | Name of Area | Name of the factory |
|--------|--------------------|--------------|--|
| I | Faizabad | Tanda | (i) M/s. S. B. Agrawal & Co. Chhajapur. (ii) M/s. Behlolpur Calendering Co. (iii) M/s. Kedarnath Finishing Works. (iv) M/s. Tanda Industrial Co. Chhajapur. |

[No. F. 6(10)/68-HI]

DALJIT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 13th August 1968

S.O. 2866.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Sasti Colliery, Post Office Ballarpur, District Chanda and their workmen, which was received by the Central Government on the 6th August, 1968.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT.
JABALPUR**

Dated July 29, 1968

PRESENT:

Shri G. C. Agarwala, Presiding Officer.

Case Ref. No. CGIT/LC (R)(17) of 1968

PARTIES:

Employers in relation to the Sasti Colliery, P.O. Ballarpur, Distt. Chanda, (Maharashtra).

Vs.

Their workman, represented through Maharashtra Colliery Workers' Union, P.O. Ballarpur, Distt. Chanda (Maharashtra).

APPEARANCES:

For employers.—Sri S. V. Kanade, Personnel Officer.

For workman.—Dr. D. P. Kawadkar, President of the Union.

INDUSTRY: Coal Mine.

DISTRICT: Chanda (M.S.).

AWARD

By Notification No. 3/2/68-LR II, dated 21st February 1968 the Ministry of Labour, Employment & Rehabilitation (Department of Labour & Employment), Government of India, referred the following matter of dispute as stated in schedule to the order of reference, to this Tribunal for adjudication:—

Matter of Dispute

Whether the management of Sasti Colliery, Post Office, Ballarpur, District Chanda (Madhya Pradesh) is justified in superannuating Shri Salam Mallaya, Mining Sirdar on the 9th August, 1967? If not, to what relief is the workman entitled?

2. Sallam Mallaya was a Mining Sirdar in Sasti Colliery of the Ballarpur Collieries Company which has Head office at Nagpur. The Colliery is situated in district Chanda (Maharashtra State). Sallam Mallaya had been in the service of the Colliery for about 40 years and as a Mining Sirdar for about 25 years. The Certified Standing Orders of the Company has a Clause No. 20(4) that a workman may be superannuated after attaining the age of 55 years. In the records of the company his date of birth is recorded as 20th July 1907. He holds an Underground Sirdar's Certificate issued by the Mining Department which is dated 15th April, 1943 (Ex. E/1). While issuing the certificate of fitness his age was recorded as 38 years. The management, both on the basis of the underground Sirdar's Certificate and the recorded age in the Identity Card found that Sallam Mallaya has crossed 60 years of age which was more by five years than the superannuation age under the Standing Orders. Further under Regulation 28 of the Coal Mines Regulations the stand taken by the management was that he could not be retained as a Sirdar after 60 years of age. Consequently, the management by their letter dated 9th August, 1967 superannuated Sallam Mallaya with immediate effect. He collected all his dues, quarterly bonus, earned wages and notice pay, all in the month of August. The Bombay Pradesh Mine Workers Union by letter dated 12th September, 1967 raised a dispute of superannuation of 8 workers including Sallam Mallaya. Conciliation proceedings took place from 23rd September, 1967 and the management was represented by one Sri Srinivasan, Special Officer, and the Union by the Secretary, Sri R. D. Singh. For Sallam Mallaya the Union was satisfied that the superannuation was justified.

but insisted for payment of dues including Profit Bonus. The management after checking up the position paid the Profit Bonus also on 28th September, 1967 as agreed. Another Union, Maharashtra Colliery Workers Union, of which Sallam Mallaya claims to be a member, it appears sent a communication to the management on 19th August by reason of the arbitration award of Dr. B. D. Sharma dated 30th December, 1963 that Sallam Mallaya before superannuation should have been given a letter for determination of age by the Civil Surgeon. It may be mentioned that on the question of superannuation age under Cl. 20(4)(a) of the Standing Orders of a certain number of workers a dispute was raised by this Union, Maharashtra Colliery Workers Union. There was arbitration agreement under the Code of Discipline on 1st November, 1963 (Ex. W/3). The specific matter referred to arbitrator was whether the management of Ballarpur, Sasti and Ghugus Collieries was justified in superannuating old workers under the provisions of the Standing Orders and if not to what relief are the workers entitled. The then Conciliation Officer who was the Arbitrator recorded an award on 30th December, 1963 (Ex. W/4). He directed that before the first notice is given for superannuation, the management should require proof of age either of School Leaving Certificate or from the Civil Surgeon, Chanda and if requested by the worker a letter for the Civil Surgeon shall be given by the management. The Union complained that without complying with this provision Sallam Mallaya has been pre-emptorily superannuated just because he had incurred displeasure of the management by deposing in a case of one Dr. Maste before this Tribunal, Case No. CGIT/LC(R) (1)/67. He had given his statement for Dr. Maste and against the management in May, 1967 and Sallam Mallaya had to pay the price by superannuation after a couple of months in August, 1967. It was contended that the action of the management was *malafide* with a view to victimise him.

3. The stand taken up by the employers was that there was no necessity to refer him to the Civil Surgeon for proof of age as by the certificate of the Mining Department issued as far back as 15th April, 1943, his age was over 62 years and so was in records of the Company. The arbitration award of Dr. Sharma was inapplicable inasmuch as it was under Code of Discipline and pertained to the case of certain specific workers. Its application cannot be extended to the present case. It was further alleged that the dispute has already been conciliated at the instance of Bombay Pradesh Mines Workers Union and the management had implemented the same. It is not open for another Union to take up the dispute. The competency of the Union to raise the dispute was also challenged. The allegations of *malafide* and motive of victimisation were denied. On these pleas of the parties, the following additional issues were framed:—

Issues:

- (1) Is the reference bad for misdescription of State of Sasti Colliery?
- (2) (a) Was Sallam Mallaya member of Maharashtra Colliery Workers' Union at relevant time?
- (b) Whether this Union has representative capacity to sponsor the dispute?
- (c) Whether the dispute had been conciliated and closed by another Union Bombay Pradesh Mine Workers Union and cannot be re-agitated by another Union?
- (d) Is the dispute not an industrial dispute?
- (3) What is the affect of the award of Dr. B. D. Sharma?
- (4) Was the conduct of the employers in refusing a letter for medical examination to Civil Surgeon unjustified. Its effect?
- (5) Are the employers debarred from continuing the worker in employment by reason of Section 28 of the Mines Act and could superannuation under Clause 20(4) of the Standing Orders?
- (6) Whether Sallam Mallaya accepted full and final payment and is estopped from challenging superannuation?
- (7) Whether the superannuation was *malafide* and to victimise him?

Findings:

Issue No. 1.—The plea has been raised on the ground that in the order of reference, Sasti Colliery, P.O. Ballarpur Distt. Chanda has been described within Madhya Pradesh, whereas actually it lies in Maharashtra. The wrong description

of the State in the order of reference and in the issue under reference does not affect validity of the reference. The issue is answered in negative.

Issue No. 2(a), (b) and (d).—Sallam Mallaya has proved the membership of the Union by coming in evidence and filling subscription receipts, Ex. W/9A to 9/R. These are a number of receipts ranging from year 1965 onwards. The fact is further proved by the evidence of the Joint Secretary of the Union, Sri Pursottam Bhanudas (W. W. 2) who brought Counterfoil receipt books as also accounts books of the Union. The Membership Register was filed in Dr. Maste's case. No. CGIT/LC(R)(1)/67, and is still a part of the record of that case. The Joint Secretary has admitted that the membership from this Colliery is only 60—70 and has not increased so far, but that does not affect the competency of the Union. It may be noted that during conciliation proceedings the management did not challenge the competency of the Union to raise the dispute. They raised other points but not the competency of the Union. It, therefore, does not lie in their mouth to contend that the Union was not competent and does not possess representative capacity. The dispute, therefore, is an industrial dispute.

Issue No. 2(c).—The dispute undoubtedly was raised by the Bombay Pradesh Mines Workers Union in conciliation as would appear from the letter of the Union dated 12th September 1967 (Ex. E/4). The conciliation proceedings report dated 23rd September 1967 (Ex. E/5) shows that the dispute was conciliated and then Union agreed to accept the stand of the management but pressed for payment of dues to the workers by a certain date and which was accepted by the management. That, however, does not debar the other Union, Maharashtra Colliery Workers Union, to raise the dispute again. The worker may be a member of two unions and the other union can also raise a dispute. It is for the management to bring the fact before the Conciliation Officer that the same dispute had been considered and conciliated at the instance of another Union and it is for the Conciliation Officer to bring the fact to the notice of the Government in his conciliation failure report. The management did not bring the fact to the notice of the Conciliation Officer, with the result that there is no mention in the conciliation failure report about the earlier conciliation initiated by Bombay Pradesh Mine Workers Union. There is no legal impediment for the other union to raise the dispute. It is, however, a different matter what view is taken on merits of the dispute in the background of earlier conciliation at the instance of another union.

Issue No. 3.—It may be that the actual dispute before the Conciliation Officer, Dr. B. D. Sharma, was with regard to certain workers of two collieries only, but the agreement (Ex. E/3) to abide by his arbitration shows that it was a general one with regard to all the workers of the three collieries of Ballarpur, Sasti and Ghugus in the matter of superannuation under Standing Order Cl. 20(4)(a). The award Ex. W/4 also shows that the direction given by the arbitrator Dr. Sharma was of general nature for all workmen to be superannuated under this clause of the Standing Orders. The direction, however, had no statutory binding force as it was only under Code of Discipline. The management could legally depart from the conventional practice recommended by the arbitrator in a just and proper case and where the bonafides are not in doubt. The whole thing will depend on the bonafides of the management.

Issues No. 4, 5, 6 and 7.—The management had good grounds to presume that Sallam Mallaya had crossed the age of 60 years. There was an Underground Sirdar's Certificate issued on 8th March, 1943 (Ex. E/1) in which his age was recorded as 38 years. This is revalidated after a medical test every 5 years and the fact was admitted by Sallam Mallaya himself. He did not care to challenge the fact of any inaccuracy in age as recorded in this certificate. Apart from this, his date of birth specifically had been mentioned as 20th July 1907 in the records of the Company which he never cared to get it corrected. This was evidently because the age was lower than recorded in the Underground Sirdar's Certificate. He had crossed 60 on either of the two basis. There was no point in the management requiring Sallam Mallaya to get himself medically examined by the Civil Surgeon, and procuring proof of age. The bonafides were accepted by the other Union, Bombay Pradesh Mine Workers Union, when the matter was taken up in conciliation by this Union. The evidence of Sri Srinivasan (E. W. 1) Special Officer who took part in the conciliation proceedings that Sallam Mallaya himself was present appears to be worthy of acceptance. Sallam Mallaya cannot be believed that the Union would take up the dispute without his knowledge and consent or that he was not even a member of that union. The fact that Sallam Mallaya accepted payment of all the dues *viz.*, quarterly bonus and notice pay on 18th and 19th August, 1967 indicates that he accepted the validity of superannuation. In furtherance of the conciliation settlement he was paid Profit Bonus for 1965-66 on 28th September 1967 as stated in paragraph 12 of the written statement of the

employers. The payment is proved by the evidence of the Manager, Sri Kumar Higher Limsay, and the Wages Payment Register (Ex. E/6). Although principle of estoppel and acquiescence is seldom attracted in industrial adjudication yet in a fit and proper case a worker cannot be allowed to go back from a position which he had voluntarily accepted. Sallam Mallaya had evidently crossed 60 years of age and under Sec. 28 of the Mines Act it was not open for the management to have continued him in employment. Just because he had deposed for Dr. Maste a few months earlier is no ground to suppose that he was victimised. The question of victimisation comes in only where the action taken is not at all justified on merits and the motives of the employment are oblique. This is not the case here. It is, therefore, held that the employers were justified in refusing a letter for medical examination to Civil Surgeon and to superannuate Sallam Mallaya under Clause 20(4) of the Standing Orders and Sec. 28 of the Mines Act, that there was no malafide on the part of employers and that Sallam Mallaya had accepted full and final payment out of his free will and in this case cannot be permitted to re-agitate the matter through another Union.

Decision:—

The management of Sasti Colliery was justified in superannuating Sri Sallam Mallaya with effect from 9th August, 1967 and he is not entitled to any relief. No order for costs.

(Sd.) G. C. AGARWALA,
Presiding Officer.
29-7-1968

[No. 3/2/68-LRII.]

S.O. 2867.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Bird's Saunda 'D' Colliery, Post Office Bhurkunda, District Dhanbad and their workmen, which was received by the Central Government on the 6th August, 1968.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AT DHANBAD**

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE No. 71 OF 1967

PARTIES:

Employers in relation to the Bird's Saunda 'D' Colliery, P. O. Bhurkunda,
District Dhanbad.

Vs.

Their Workmen

PRESENT:

Shri Kamla Sahai, Presiding Officer.

APPEARANCES:

For the Employers.—Shri D. Narsingh, Advocate.

For the Workmen.—Shri B. K. Lath, Advocate.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, dated the 27th July 1968

AWARD

The Central Government has made this reference under its order No. 2/130/67-LRII, dated the 1st December, 1967 for adjudication of the industrial dispute as mentioned in the schedule which is as follows:—

SCHEDULE

“Whether the management of Bird's Saunda 'D' Colliery, P.O. Bhurkunda, District Hazaribagh, Bihar was justified, in stopping from work Shri Mahadeo, General Mazdoor with effect from the 26th July, 1967? If not, to what relief is the workman entitled?”

2. The facts of the case are rather short. Shri Mahadeo, the concerned workman, was working as prop mazdoor in the Bird's Saunda 'D' Colliery. The management's case is that he worked as such from the year 1958 but the union's case is that he worked sometimes as prop mazdoor and sometimes as pump mistry from 1955. This difference between the two parties does not appear to be material for the purposes of the case.

3. It is the admitted case of both parties that Shri Mahadeo met with an accident on 13th August 1963 as a result of which his spine was fractured. He was medically treated in Naisarai Ramgarh Hospital and the Central Hospital of the Coal Mines Welfare Organisation at Jagjiwannagar, Dhanbad but was not cured in those hospitals. Hence he went, in due course, to the Sadar Hospital at Ranchi at his own cost. He admittedly remained there until 25th May, 1966 when he was discharged.

4. It seems that there was the question of assessment of the disablement of Mahadeo under Workmen's Compensation Act. He addressed a letter (Ext. M. 2) dated 22nd November, 1966 to the Manager of the Colliery, requesting him that he should be sent to a Medical Board at Ranchi Sadar Hospital for assessment. Among other things, he has said in that letter that the Medical Board, Central Hospital, Dhanbad, had assessed his permanent disablement at 15 per cent loss in earning capacity in respect of the fracture of his 8th Dorsal Vertebrae but he was feeling pain on his 8th Dorsal spine and he said that his total disablement came from this that he had lost his earning capacity by 100 per cent.

5. It appears that the Manager of the Colliery made enquiries by a letter dated 25th January, 1967 and Dr. R. Prasad of Ranchi Sadar Hospital gave the reply (Ext. W. 5) dated 28th January, 1967 in which he said as follows:—

"Sri Mahadeo Prasad was admitted on 20th March, 1965 for pain back of 2 years duration. There was an old compression fracture of 8 D. Spine for which an operative treatment was done. He was discharged on 25th April, 1966 with a spinal trace. He is fit for light duties. He still complains of pain on straining his back".

6. Mahadeo wrote a letter (Ext. M. 1) dated 24th April, 1967 to the Manager of the colliery. The important parts of this letter are as follows:—

"More than a month ago I have applied your kind mercy to provide me with light job at surface as per your advice and instruction. "But regret much I have not been heard any consideration to my case as yet, for this reason I am suffering much in this hard days.

"Will you therefore look into my miserable condition, by giving me any so that I could save from this starvation".

7. The workmen's case as put by the Kranti-Kari Koyala Mazdoor Sangh is that, on discharge from Ranchi Sadar Hospital, Mahadeo was employed again in the colliery from 29th January, 1967 and was given work sometimes as Chaprasi and some-times as pump khalasi. He became a member of the Kranti-Kari Koyala Mazdoor Sangh and, therefore, the management stopped him from work with effect from 26th July, 1967.

8. The management's case, on the other hand, is that Mahadeo pleaded for mercy and prayed for some employment in which his duty would be light. They have referred to the letter (Ext. M. 1) dated 24th April, 1967 in support of this allegation. Their case further is that he was given light work for some time but he was never given the work of a Chaprasi. He did some work for the company intermittently from the 27th April, upto the 25th July, 1967 but, as no light work was available after 25th July, 1967, Mahadeo was not given any such work from 26th July, 1967 onwards.

9. At the hearing, the parties have filed some documents which have been marked exhibits. The workman has examined only himself as W. W. 1. The management has examined two witnesses. Dr. Sontosh Kumar Ghose (M. W. 1) is the present Manager of the Colliery M. W. 2 is Shri J. Chakraborty, Time-keeper in the colliery.

10. Nothing turns upon the question whether Mahadeo worked before his accident as prop mazdoor only or sometimes as prop mazdoor and sometimes as pump mistry. It is, therefore, unnecessary to consider the evidence on this point. The Union has put in evidence several letters by which Krantikari Koyala Mazdoor Sangh raised this dispute on behalf of Mahadeo. This appears

to be correct and I need not discuss this point further. The questions which require consideration may be formulated as follows:—

- (i) Can Mahadeo be deemed to have continued in service and can his service conditions be held to have continued after his accident in 1963?
- (ii) Did the old service conditions of Mahadeo revive when he joined the colliery again?

Did he join the colliery on the 29th January, 1967 as alleged by the union or on the 27th April, 1967 as alleged by the management?

- (iii) Was the act of the management in not giving work to Mahadeo with effect from 26th July, 1967 unjustified?

Point Nos. (i) and (ii):

11. It is convenient to take up these questions together. It is obvious from Ext. M. 1 dated 24th April, 1967 that Mahadeo as not given any employment in the colliery before that date. He, therefore, begged the manager for mercy in order to save him from starvation. He did not then stand upon his rights, and claim to be entitled to his old employment on his old service conditions. The Manager could only have given him some employment after that date. It is, therefore, extremely probable that Mahadeo got employment in the colliery with effect from 27th April, 1967 as alleged by the company. I hold accordingly. In fact, Mahadeo has examined himself and has himself said in his evidence that he rejoined the company in April, 1967 after getting over his accident.

12. Mr. Lath, Advocate, appearing on behalf of the workman, has vehemently argued that, since the company never terminated the service of Mahadeo, he must be deemed to have continued in service all along even after his accident and his service conditions must also be deemed to have continued to be the same as before the accident. I am unable to accept this argument. Unless an employee is capable of rendering service. It is difficult to see how he can be said to continue in service. Both sides have obligations in the case of service. The employee has the obligation to render service and the employer has the obligation to honour and fulfil the service conditions of the employee. In my opinion, it is not legally necessary for the employer to put a formal order of termination of service if this service comes to an end by reason of the fact that the employee become incapable of rendering service of the kind which he had agreed to render or was rendering. Reliance may be placed in this connection on the decision of the Supreme Court in the case of the Workmen of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Vs. Its management, reported in 1962 (1) L.L.J. 213. Although their Lordships were concerned in that case with the question of retrenchment. Sarkar J. who delivered the judgment of the Court, observed :

"It seems to us that a service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before, and it is, therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires certain physical fitness in the workmen. Where, therefore, a workman is discharged on the ground of ill-health, it is because he was unfit to discharge the service which he had undertaken to render and therefore it had really come to an end itself".

13. In the present case, Mahadeo was undoubtedly discharged from the Ranchi Sadar Hospital but the Doctor's letter (Ext. W. 5) shows that he still complained of pain when he strained his back so that he was only fit for light work. This means that he was not fit to resume his old duties. He was, therefore, not entitled to his old service conditions. Indeed, he has himself stated in (Ext. M. 2) that his disablement was total because the loss of his earning capacity was 100 per cent.

14. In his evidence, Mahadeo does not say that he got his old wages when the company employed him after his discharge from the Hospital. He says that he got the pay of the work which he did. The evidence of M. W. 1 and M. W. 2 shows that Mahadeo did not work continuously, but he worked only intermittently during the period from the 27th April to 25th July. I do not see any good reason not to accept the evidence of these witnesses.

15. It is, therefore, clear that he was not in regular service even during the above period. Obviously, the manager had taken pity on him and had given him whatever light employment was available at any particular time. In these circumstances, it is impossible to accept Mr. Lath's argument that Mahadeo's service

conditions were the same in 1967 as they were before his accident in 1963. In my opinion, Mahadeo was only entitled on being employed in 1967 to get the wages for whatever he did and not to get the company forced to give him his old work.

16. I, therefore, hold that neither his service nor his service conditions continued after his accident and consequent disablement to render service as before. His service conditions cannot also be held to have been revived on his being given some light work sometimes by the management in 1967 which he performed intermittently.

Point No. (iii):

17. It follows from the findings which I have recorded above that Mahadeo was not entitled as a matter of right to get employment from the company in 1967. The management was, therefore justified in not giving work to or stopping Mahadeo from work with effect from 28th July, 1967. The case of victimisation of Mahadeo on account of his having become a member of the Kranti-Kari Koyla Mazdoor Sangh is manifestly without substance because he admits in his evidence that he was a member of that union when the company gave him work in April, 1967. The second question put in the schedule does not arise for consideration.

18. This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act.

(Sd.) KAMLA SAHAI,
Presiding Officer.
[No. 2/130/67-LRII.]

S.O. 2868.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Bhowra Kankanee Collieries Limited, Bhowra Colliery, P.O. Bhowra, District Dhanbad and their workmen, which was received by the Central Government on the 5th August, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT
DHANBAD

In the matter of a reference under section 10(i)(d) of the Industrial Disputes Act, 1947.

REFERENCE No. 53 OF 1967

PARTIES:

Employers in relation to the Bhowra Kankanee Collieries Limited, Bhowra Colliery, P.O. Bhowra, District, Dhanbad.

Vs.

Their Workmen

PRESENT:

Shri Kamla Sahai, Presiding Officer.

APPEARANCES:

For the Employer: Shri K. C. Nankeolyar, Dy. Chief Personnel Officer.

For the Workmen: Shri Prasanta Burman, Secretary, Khan Mazdoor Congress.

STATE: Bihar.

INDUSTRY: Coal.

Camp: Bombay, dated the 12th July, 1968

AWARD

By order No. 2/27/67-LRII dated the 14th November, 1967, the Central Government made this reference to this Tribunal for adjudication of a dispute referred to in the schedule which is as follows:—

SCHEDULE

"Whether the dismissal of Shri Rabi Mahato, Sand Conveyor by the management of Bhowra Colliery of Bhowrah Kankanee Collieries Limited with effect from the 25th December, 1966 was justified? If not, to what relief is the workman entitled?"

2. By a Corrigendum dated the 4th January, 1968, the year 1966 mentioned in the schedule has been altered to 1964. The question for adjudication, therefore, is "whether the dismissal of Rabi Mahato with effect from the 25th December, 1964 was justified? If not, to what relief is the workman entitled?"

3. Shortly stated, the employers' case is that this is a case of individual and not industrial dispute because the concerned workman was not a member of the Khan Mazdoor Congress at any time before his dismissal from service or soon thereafter. It is unnecessary to consider this point at any length because it is obvious that Rabi Mahato became a member of the Khan Mazdoor Congress before the reference in as much as the union (the Congress) started raising a dispute in connection with the workman with effect from the 19th November, 1965, when the General Secretary wrote a letter to the Asstt. Labour Commissioner (Central), alleging that he had been working continuously from the 11th May, 1964 but had not been paid his wages. It has been laid down in the case of Workmen of Jamadoba Colliery *versus* Jamadoba Colliery of M/s. Tata Iron and Steel Co. Ltd., Jamadoba, reported in 1967 (II) L.L.J. 663, that the crucial date is the date of the reference and that, if the workman concerned becomes a member of the union before that date, the reference must be held to be valid because the dispute turns from an individual dispute into an industrial dispute.

4. As to the merits of the case, the employers have stated that Rabi Mahato had been working as a sand conveyor mazdoor in Bhowra Colliery; that the sand conveyor mazdoor is an unskilled mazdoor in the lowest category i.e., category I and he is liable to be transferred to any other job of a mazdoor if that is done without causing him any prejudice as to his wages and service conditions; that Shri P. G. Ghosh, Engineer, (MW1) was incharge of the workshop, sand line including the conveyor, underground and surface installations of electrical and mechanical machines in the mine; that the men working in these places were under his control, that he transferred Rabi Mahato from the position of conveyor mazdoor to that of a mazdoor in the moulding section of the colliery workshop but Rabi Mahato did not obey; that an official order of transfer was then made in writing on the 9th March, 1963 by the Manager; that Rabi Mahato disobeyed that order also and remained absent from duty; that a chargesheet was then served upon him and, at the conclusion of the domestic enquiry, he was punished with suspension for eight days; that he remained absent even after the period of suspension was over and that, in all, he remained absent for about 14 months inspite of the fact that the Chief Agent sent him a letter (Ext. M 19) advising him to join his work and promising to show him leniency. The employers' case further is that Rabi Mahato sent a letter (Ext. M 20) dated the 9th July, 1963, expressing regret and promising to join the moulding section of the workshop but he did not keep his promise and did not join. Chargesheet No. 146/63/5 was drawn up against him but he was let off with a warning in the hope that he would behave better.

5. At his own request and at the request of the Conciliation Officer (C) and Labour Enforcement Officer, the management allowed him to join as conveyor mazdoor and not as a mazdoor in the moulding section of the workshop with

effect from the 11th May, 1964. On the 14th May i.e., on the fourth day, however, Shri P. G. Ghosh, (MW 1) ordered him to do the work of belt cleaning but he refused to carry out that order. Although such orders are usually given verbally, he asked for a written order. Thereafter, he began to absent himself again without leave and without permission.

6. It is also the case of the employers that, on the 5th August, 1964, Rabi Mahato suddenly appeared at the place of his previous work and forcibly tried to take hold of the chute and the operator's place from the man who was then doing the work and kept the chute stopped for about four hours. It was with great difficulty that the Welfare Officer and the Asstt. Engineer persuaded him to let go the chute. The management thereupon issued chargesheet No. 218/64/8 (Ext. M21 and W1) dated the 5th August, 1964 against him. His reply is Ext. M22 and W2, dated the 14th August, 1964. The reply was not considered satisfactory and thereupon Shri K. C. Nankeolyar (MW 3), then Welfare Officer, was asked to conduct the enquiry. He fixed 29th August, 1964 for enquiry but Rabi Mahato did not appear on that date and, at the suggestion of the Manager, MW 3 postponed the enquiry to 15th September, 1964. The same thing happened on that date and the enquiry was again postponed at the instance of the Manager to 16th December, 1964. It is alleged by the employers that Rabi Mahato was present at the time when Shri P. G. Ghosh, (MW 1) was being examined before the Enquiry Officer but he left at that time, saying that the Enquiring Officer could do whatever he liked. The Enquiring Officer then proceeded to conclude the enquiry ex-parte in the absence of Rabi Mahato. On 21st December, 1964, he submitted his report (Ext. M 38), holding that the guilt of Rabi Mahato according to the chargesheet had been proved. On the basis of this report, the Manager recommended Rabi Mahato's dismissal and the Agent approved it. It was accordingly conveyed to Rabi Mahato by a letter dated the 25th December, 1964 that he was being dismissed from the company's service with effect from that date. The letter conveying the order of dismissal (Ext. M 30) was served upon Rabi Mahato by the peon (MW 4) through the Peon Book (Ext. M 43).

7. It is further said that Rabi Mahato started harassing the Chute operator in July, 1966 and, therefore, the Manager sent him a letter (Ext. M 39) dated the 27th July, 1966, saying that he had already been dismissed and hence he had no business to harass the workmen of the company and that, if he continued in that course, the management would be compelled to take Police help. A copy of the letter (Ext. M 30) was enclosed with this letter. The union's case is that Rabi Mahato was first informed about his dismissal when he received a copy of the dismissal letter (Ext. M 30) along with the letter (Ext. M 39). On this basis, the union raised a dispute about Rabi Mahato's dismissal by a letter dated the 18th August, 1966 addressed to the Asstt. Labour Commissioner (C), Dhanbad. It is alleged on behalf of the employers that the union's case that the workman was informed about his dismissal for the first time by the copy of the dismissal letter which was sent along with Ext. M 39 is altogether false and has been made only with a view to cover up the great delay in raising the dispute.

8. The union, Khan Mazdoor Congress, has filed a written statement on behalf of the workman. No reference has been made in it about what happened before 11th June, 1964. It seems that the incidents of 1963 are not disputed. Indeed, Rabi Mahato has examined himself as WW 5. He has admitted that, when he did not comply with the order of transfer to the workshop, a chargesheet was issued to him and he received it. He says that there was no enquiry in connection with that chargesheet but, as I will presently show, an enquiry was in fact held by Shri B. M. Lal, (MW 2) and he participated in that enquiry. He does not admit that he was suspended for eight days as a punishment at the conclusion of that enquiry but he admits that he remained idle without doing any work for the company for about fourteen months and that the company did not give him anything as wages for that period.

9. It has been alleged in the workman's written statement that he has been frequently given orders of transfer on account of the management's displeasure with him for his trade union activities. It proceeds further to mention that the concerned workman was transferred to work as a sand line conveyor mazdoor from 11th May, 1964, that he joined his duty as such but only four days later i.e., on the 16th May, 1964, he was verbally ordered to do the different job of belt-cleaner, that he wanted a written order for the change in his job but the management refused to give him any such order and stopped marking his attendance

from that date and withheld his wages, that a chargesheet was issued to him on 5th August, 1964 and he gave a reply on 14th August, 1964, that the management did not get any enquiry held into the chargesheet nor did it pass any order for about two years, that an industrial dispute was raised by the union on his behalf for non-payment of wages, that at the instance of the Asstt. Labour Commissioner (C), Dhanbad. II, he filed claim application No. PW 15 of 1966 on 21st June, 1966 before the Labour Court at Ranchi and that the management then sent him a letter dated 27th July, 1966 enclosing a copy of an alleged letter of dismissal dated the 25th December, 1964 which he received on the 2nd August, 1966. It is also alleged that, prior to the 2nd August, 1966, Rabi Mahato had absolutely no knowledge about his alleged dismissal. It is said that the entire proceedings of the enquiry are fabricated and so the letter of dismissal. On the basis of these allegations, it is prayed that the alleged dismissal of Rabi Mahato of the 25th December, 1964 be held to be unjustified.

10. At the hearing, each party has filed a number of documents. Each party has also examined five witnesses. It is necessary for me to discuss the oral and documentary evidence and then to reach my conclusions. The points which can be formulated for consideration are as follows :—

- (i) Did Rabi Mahato continue to work as an employee of the company after the 14th May, 1964 ?
- (ii) Does the evidence establish that Rabi Mahato has been harassed or victimised by the management ?
- (iii) Was a domestic enquiry held by Shri K. C. Nandkeolyar (MW 3) in connection with chargesheet No. 216/64/8 dated the 5th August, 1964 on the 16th December, 1964 and is it a fact that Rabi Mahato was present at the enquiry at the time of examination of Shri P. G. Ghosh (MW 1) and then went away of his own accord ?
- (iv) Is it true that Rabi Mahato did not know about his dismissal until the 2nd August, 1966 when he received a copy of the dismissal letter dated the 25th December, 1964 along with the management's letter dated the 27th July, 1966 ?
- (v) Is the order of dismissal passed against Rabi Mahato justified ?

Points (i) and (ii)

11. It will be convenient to take up these points together. It will be necessary to consider the events of 1963 before I consider these two points.

12. The Company's case is that Rabi Mahato was previously working as sand line conveyor mazdoor. In March, 1963, Shri P. G. Ghosh (MW 1) who was in control of that section as well as the workshop and other sections, ordered his transfer from the sand line to the moulding section of the workshop. Rabi Mahato refused to obey that order and thereupon an official order of transfer (Ext. M 5) dated the 9th March, 1963 was passed by the Manager. Rabi Mahato did not carry out that order also. Chargesheet No. 45/63/5 (Ext. M 9) was issued to him. He gave a reply Ext. (W 11) on the 8th April, 1963 to the letter, conveying the order of his transfer. He stated therein that he did not know anything about the work of moulding mazdoor and, therefore, he could work as conveyor mazdoor and not as a mazdoor in the moulding section. Any-way, domestic enquiry was ordered to be held by Shri B. M. Lal (MW 2). He accordingly conducted the enquiry and recorded the statements of several persons including that of Rabi Mahato. He has proved that all the statements have been written by his clerk, Shri D. N. Singh, at his dictation. The three statements have been marked as Exts. M 23, M 24 and M 25. He also says that Rabi Mahato made over to him the petition (Ext. M 20), which according to him was written by Ram Mitra of the C.P.I. MW 2 has proved the handwriting in the petition (Ext. M. 20) to be in the pen of Ram Mitra. In this petition, Rabi Mahato expressed regret and also expressed his willingness to join work as conveyor mazdoor. There can be no doubt that this petition was written on his behalf but he has denied in his evidence that it was a petition written on his behalf or filed by him. In any case, he did not act upon it and he did not join his duty. Admittedly, he continued to be absent from duty for about fourteen months including the period of eight days from the 1st to the 8th May, 1963 when he was ordered to remain suspended as punishment for disobedience of the orders of transfer. He wrote letters (Exts. M 16 and M 17)

dated the 2nd May, 1963 to the Chief Agent protesting against his transfer and praying for a decision in his case. Ext. M 18 is another letter dated the 10th May, 1963. It is rather amusing to find that he has added at the end of his petition, "Failure to pass legal judgment to my case within ten days from date will oblige me to file a public case against the management". The Chief Agent wrote a letter (Ext. M 19) dated the 25th May, 1963 in which he said that Rabi Mahato had not yet obeyed the transfer orders and it appeared that he had no intention to obey the same. He added that he wished to make it clear that the management had a right to transfer an employee from one work place to another without affecting his wages. Towards the end of the letter, the Chief Agent said, "even now I would advise you in your own interest to obey the same and to report for and join duties in the workshop in the moulding section within seven days of the receipt of the letter failing which it shall be considered that you were not interested in your employment and the management in that case shall be free to terminate your services. In the event of your now resuming your duty as advised, I shall still view the matter leniently and condone your absence to maintain continuity of your service. I trust you will abide by the advise given above". This letter also does not appear to have had the effect inducing Rabi Mahato to join his duty.

13. It appears that, at the intervention of the Asstt. Labour Commissioner and Labour Enforcement Officer, the management withdrew the order of Rabi Mahato's transfer and allowed him to join as conveyor mazdoor on the 11th May, 1964. Thus, (1) the Chief Agent gave Rabi Mahato the assurance of leniency in 1963, and (2) the management further treated him sympathetically by allowing him to join as conveyor mazdoor on the 11th May, 1964 after he had remained absent without leave and without permission for about fourteen months. These actions do not indicate any intention on the part of the management to harass or victimise Rabi Mahato.

14. On the 14th May, 1964, the colliery Engineer, P. G. Ghosh, (MW1), ordered Rabi Mahato to clean the conveyor belt. He says that some sand gets attached to the conveyor belt, when it is being worked and then it becomes necessary to clean the belt. He further says that every conveyor mazdoor has to clean the belt at one time or the other. There seems to be no reason to disbelieve this witness. An attempt has been made on behalf of Rabi Mahato to show that his work was only that of chute operator but that cannot be correct because the management has described him in its letters as conveyor mazdoor and he has described himself in his letters to the management as conveyor mazdoor. It was, therefore, clearly his duty to clean the belt and remove the sand. Since every conveyor mazdoor has to do this work, Rabi Mahato was not at all justified in asking for a written order or in refusing to do the work.

15. Rabi Mahato's case is that, though he did not obey the Engineer's order and clean the belt, he continued to do his work as usual on and after the 16th May, 1964. On the very face of it, this is rather improbable. On the 16th May itself, he wrote a letter (Ext. W6) to the management in reply to a letter which the Manager had written to him on the 9th May, 1964. In this letter, he has said that the Manager wanted him to work as sand conveyor mazdoor but the Engineer wanted him to work as a belt cleaner but, on demand, he refused to give him a written order. He makes no mention in that letter that he was continuing to work.

16. Ext. W7 is another letter dated 25th May 1964 written by Rabi Mahato to the Manager. In this letter, he has protested that he had worked for six days in the week ending the 16th May, 1964 but his attendance had been booked only for four days. He has said that the Engineer has, for some reason, cut two days of his attendance and that, if he is a gentleman, he should give him (Rabi Mahato) the reason for cutting the attendance for those two days. It is significant that he does not say in this letter that he continued to work even after the 16th May, 1964, though that is his case now.

17. The Agent wrote to him a letter (Ext. W11) on the 15th June, 1964. In this letter, the Chief Agent has stated that the management had shown him great leniency but it was reported that he had become more arrogant and less interested in work. It was also reported that he refused to do belt cleaning although all the conveyor mazdoors did belt cleaning whenever called upon to

do so and, further, the duties of an unskilled worker could not be reduced into writing. He has then added the following paragraphs:—

“From the side of management, I assure you that we have no ill feeling against you and we will promptly look into any complaint of discrimination if any, shown towards you. However we expect that you will also work obediently and diligently at the same time, just as other mazdoors are working and will not give any occasion for the supervisory staff to report against you”.

He has then referred to the fact that Rabi Mahato's brother and father were also employees of the company and that, inspite of messages sent through them, he did not come to the Labour Welfare Officer's office.

18. In another letter (Ext. W15) which Rabi Mahato addressed to the Chief Agent on the 13th August, 1964, he stated for the first time that his attendance was not marked after the end of four days after 11th May 1964, that inspite of his regular attendance on duty another man had been deputed to do his work, that he had never allowed the other man to do his duty till then but that no step had yet been taken to remove the said man or to give him (Rabi Mahato) notice that his service was no longer required. He further added that, at an interview with the Chief Agent, the latter had threatened to kill him. The last but one paragraph is as follows:—

“Please note that a months' time is hereby given to you to make a final decision or else I shall be obliged to refer the matter to Court”.

19. No other letter appears to have been written by Rabi Mahato to the management. There is, however, a letter sent by the General Secretary of the Khan Mazdoor Congress dated the 3rd September, 1964 (Ext. W16) addressed to the Conciliation Officer, demanding that Rabi Mahato be paid all his wages due to him from 11th May 1964 upto date. Another letter (Ext. W 17) was also sent by the General Secretary of the union on the 5th September, 1964 to the Conciliation Officer (C), demanding that the workman be paid all his wages.

20. The company's case is, as I have already said, that Rabi Mahato ceased to work from the 15th May, 1964 but he suddenly appeared at his old place of work on the 5th August, 1964, disturbed the man who was working in his place and stopped the chute from 3 to 7 P.M. A chargesheet was issued and a domestic enquiry was held. Ultimately, Rabi Mahato was dismissed with effect from the 25th December, 1964 under a letter of the same date. I will deal with these allegations in detail later but I may state for the present that it is rather significant that, although Rabi Mahato gave the Chief Agent only one month's time from the 13th August, 1964 to decide his case, he did not write any letter to the management after the 13th August, and the union also does not appear to have written any letter to the Conciliation Officer after the 5th September, 1964. The first action which appears to have been taken by the workmen or the union after the alleged date of dismissal i.e. the 25th December, 1964 was that, on the 21st June, 1966, about one and a half years later, application No. P.W. 15 of 1966 was filed before the Labour Court, Ranchi, on behalf of Rabi Mahato for recovery of wages for the period 11th May, 1964 to 21st June, 1966. It is rather significant that, although Rabi Mahato was in such a great hurry for a decision as shown by his letter (Ext. W.15) in August, 1964, he kept absolutely quite thereafter until about one and a half years after the alleged date of his dismissal. There is considerable force, therefore, in the argument on behalf of the company that the fact of his silence for such a long time clearly indicates that the letter conveying the order of dismissal was served upon him as alleged by the company.

21. One document (Ext. W.18) remains to be considered. It purports to be a statement made by some conveyor mazdoors to the effect that Rabi Mahato had been working all the time from 11th May, 1964 but the management had not been marking his attendance. This document has been formally proved by Shri B. P. Tripathi, (WW.3), the Organising Secretary of the Khan Mazdoor Congress. He has stated in his chief that he took the signatures and thumb impressions of all concerned workmen on Ext. W.18 near the Bhowra sand conveyor line and that they put their signatures and thumb impressions after reading the entire document. On being cross examined, he has said that he raised the industrial dispute on behalf of Rabi Mahato in December, 1966 because he was neither suspended nor dismissed in fact before-hand, that he was always working and that it was not true to say that he was dismissed in 1964. I consider it to be highly improbable for a workman to have worked all the time from the 15th May, 1964 to the 21st

June, 1966 in spite of the fact that he did not get any wages. It was necessary for him to maintain himself and his family and it is too much to expect that he would continue to work for almost two years without payment and without having the means of maintaining himself and his family. I, therefore, do not believe the statement of this witness which I have just mentioned. He goes further and says that Rabi Mahato was stopped from work only on the 2nd August, 1966 when the Police arrested him. This would mean that he continued to work in the service of the company even after filing his application in the Ranchi Labour Court on the 21st June, 1966. Unless one is extremely credulous, one cannot accept such a story. On being cross examined about the statement (Ext. W.13 which has been wrongly typed in the deposition as W. 15) this witness says that he got the petition written. He first said that he could not give out its contents without reading it. When the document was made over to him, he said that he did not know English very well and that he could not read it. It is, therefore, clear that the suggestion made to him that he has falsely said that he got the petition written is correct. The petition or statement is in English and, as he does not know English, he could not have got it written. If he did not get it written, there is no evidence as to who wrote the statement (Ex. W. 18) or who dictated it. Out of the signatures on this petition, only one namely Lakhan Ram Manjhi has been examined as WW.4. He has also made the incredible statement that Rabi Mahato continued to operate the chute from the 11th May, 1964 to the 2nd August, 1966. I am not prepared to believe him as no one could work for such a long time without payment of wages and even after filing a petition for recovery of his wages.

22. Rabi Mahato (WW.5) has made a similar statement but he is a highly interested witness and I am not prepared to believe the statement because of its improbability.

23. Dhurab Yoti Das (MW. 5) has produced the attendance register for the year 1964. He has stated and his statement is supported by the relevant entries in the register (Ext. M44) that Rabi Mahato worked in the sand line section for only four days in 1964 i.e. from the 11th to the 14th May, 1964. There is no reason at all to disbelieve him. He has hardly been cross-examined. The only question which has been put to him is whether he maintains the attendance register and he has said that he does.

24. Having considered all the facts and circumstances of the case, I hold that Rabi Mahato did not continue to work for the company after he refused to obey the order of Shri Ghosh (MW.1) to clean the conveyor belt and the union's case in this respect is untrue. I further find that the management showed Rabi Mahato great consideration and undoubtedly treated him leniently from time to time. His father and brother are still in the service of the company and there is absolutely no reason why the management should select only Rabi Mahato for harassment and victimisation. Transfer orders have not issued to him frequently. He did not obey the first transfer order passed in 1963 and he did not carry it out. The management still took him back on the intervention of the Asstt. Labour Commissioner and Labour Enforcement Officer and put him on his old job as conveyor mazdoor. He says that he was working only as chute operator and it was not his business to clean the conveyor belt. MW.1 has proved that the conveyor mazdoor has to clean the belt also. MW. 2 has stated—and I do not see why I should disbelieve him—that the jobs of sand conveyor mazdoor, belt cleaner and moulding mazdoor are all those of unskilled worker and they are all paid wages of category I. He further says that these jobs are inter-chargeable as they are to be done under the control of one engineer.

Point (iii)

25. As I have already said, the company's case is that the colliery Engineer (MW 1) ordered Rabi Mahato to clean the conveyor belt on the 14th May, 1964 but he refused to do that work and wanted the engineer to give him a written order to that effect. As MW 1 has said, orders of this kind are usually given verbally. It also stands to reason that, when Rabi Mahato was the conveyor mazdoor, the cleaning of the conveyor belt must have been a part of his duty in that capacity. I do not see why MW 1 would have given him an order in writing. The company's case, however, is that Rabi Mahato not only disobeyed the order but remained absent from the 15th May. This receives considerable support from Rabi Mahato's letter (Ext. W 7) dated the 25th May, 1964 in which he claims to have worked only for six days i.e. upto the 16th May, 1964. He does not mention in the letter that he continued to work even after the 16th.

26. The company's case further is that Rabi Mahato appeared suddenly at the place where he used to work previously, pushed aside Kailu Gope, (WW 1) and

stopped the chute for several hours i.e. from 3 to 7 P.M. It is further alleged that, at about 7 P.M., the Welfare Officer and the Asstt. Engineer persuaded Rabi Mahato to leave the place. Kailu Gope says that he is a tyndal mazdoor from about ten years and that it is not his business to operate the chute or to clean the belt because he is a tyndal. He also says that no one ever asked him to work as a chute operator in Rabi Mahato's place and that Rabi Mahato never pushed him out at any time when he was working as a chute operator. It is impossible to accept that no officer of the company ever asked Kailu Gope to work as a chute operator in place of Rabi and, in spite of this fact, the company has alleged that he was working as a chute operator in place of Rabi Mahato.

27. The company issued charge-sheet No. 216/64/S (Ext. M 21 and W 1) on the 5th August, 1964 against Rabi Mahato. Shri K. C. Nandkeolyar, then Welfare Officer, was appointed to hold the enquiry by letter dated the 25th August, 1964 (Ext. M 26) when the workman's reply (Ext. M 22 and W 2) dated the 14th August, 1964 was found to be unsatisfactory. The enquiry was first fixed for 29th August, 1964 but Rabi Mahato did not turn up on that date. Shri Nandkeolyar submitted a note (Ext. M 32) in this connection to the Manager who passed an order on that note to the effect that one more chance should be given to Rabi Mahato. The enquiry was, therefore, postponed and fixed for the 15th September, 1964. Ext. M 27 is the letter issued to Rabi Mahato to that effect. On that date also, Rabi Mahato did not attend the enquiry. Shri Nandkeolyar again wrote a note (Ext. M 33) to the Manager. The Manager ordered that another chance should be given to him. The enquiry was then fixed for the 16th December, 1964. Rabi Mahato was informed accordingly and he attended the enquiry on that date. He, however, remained present only while the statement of Shri P. G. Ghosh, Engineer, (Ext. M 8) was recorded. Rabi Mahato left the place of enquiry abruptly when the statement was still in the course of being recorded. While he was leaving, Shri Nandkeolyar told him that, if he left the place, the enquiry would be conducted in his absence and that it would be at his risk that he would leave the place. Rabi Mahato replied in Hindi "Apko jhutmut jo kuchvi karna hai kar de yadi ham ja rahe hai". Shri Nandkeolyar recorded the statement in presence of three witnesses namely Jogendra Dubey, Office Peon, Budhu Mia, union representative and one Jadu Mahato and got their signatures taken after their statements as recorded were read over to them. After making the statement just mentioned, Rabi Mahato left the place of enquiry. Shri Nandkeolyar proceeded with the enquiry and got the statements of V. R. Prahar, Asstt. Engineer, sand line, B. M. Lal, Welfare Officer, Dhurab Yoti Das, Register Clerk, Kailu Gope, Conveyor mazdoor and Ramu Modak, sand line electric helper recorded by Shri D. N. Singh, his clerk, at his dictation. He himself signed all the statements which were recorded. The enquiry was then closed with the remark "the enquiry was closed as there is none to appear". The statement of the witnesses just referred to are respectively, Exts. M 34, M 29, M 35 and M 36. It may be mentioned that Kailu fully supported the company's case in his statement (Ext. M 36). While cross-examining Kailu Gope, Shri Nandkeolyar put to him that he himself got his statement recorded and took his thumb impression on it but he has denied this suggestion.

28. All the aforesaid documents have been filed and have been marked as Exts. Shri Nandkeolyar has fully supported the company's case that he held the enquiry and got the statement of the witnesses recorded. His evidence is that Rabi Mahato attended the enquiry and heard part of the statement of Shri P. G. Ghosh (MW 1) but went away after saying what I have already mentioned. It is difficult to accept the union's suggestion that all the enquiry papers including the enquiry officer's report (Ext. M 38) which is a very elaborate one were completely fabricated. There seems to be no reason for fabrication of these documents. The company had nothing to lose by giving a chance to Rabi Mahato to attend the enquiry and to defend himself. I consider it highly improbable for the company to have taken the risk of fabricating the documents.

29. Shri Nandkeolyar held in his report (Ext. M 38) that Rabi Mahato was guilty of the charges framed against him. On the basis of this report, Rabi Mahato was dismissed with the approval of the Agent. This was conveyed to him by the Manager by the letter (Ext. M 30) dated the 25th December, 1964. It was said that the dismissal would have immediate effect. This letter was sent for service with a peon book. Jogendra Dubey, MW 4 is the Welfare Officer's peon in Bhowra Colliery. He says that he was present in the office at the time when the enquiry relating to Rabi Mahato was held and he proves his signature Ext. M 8(A) as well as the thumb impression Ext. M 8(b) of Rabi Mahato at the bottom of the remark noted by Shri Nandkeolyar about the departure of Rabi Mahato after

telling him that he could do what he liked. He has further proved the thumb impression (Ext. M 43) of Rabi Mahato in the peon book in token of having received the letter, conveying to him the order of his dismissal. On being cross-examined, he has stated that all the thumb impressions of Rabi Mahato which he has proved were made in his presence. There is nothing in his cross-examination to show that he is interested against Rabi Mahato. I do not see why he should give false evidence against him (Rabi). I feel that his evidence is perfectly reliable. Shri B. M. Lal (MW 3) has proved the entry (Ext. W 12) in the Peon Book relating to the despatch and receipt of the letter of dismissal (Ext. M 30). He has admitted that the thumb impression of Rabi Mahato was not taken in his presence but, as I have just said, MW 4 has proved that the thumb impression (Ext. M 43) was taken in his presence. Shri K. C. Nandkeolyar has proved that the letter (Ext. M 39) dated the 27th July, 1966 was sent to Rabi Mahato by the Manager, Shri R. K. Yashraj, because it was reported at about that time that Rabi Mahato was obstructing workers. In this letter, the Manager has written that, since Rabi Mahato had already been dismissed, it would be necessary for the management to take police help in order to stop obstruction of workers by him if he persisted in that course.

30. On the other hand, Kailu Gope (WM 1), has made one statement before the enquiring officer and has made quite a different statement before me. Before the enquiring officer, he stated that Rabi Mahato did not attend to his duty in the colliery from the 15th May, 1964. He has said something quite contrary before the Tribunal. For this reason and for other reasons which I have given above, I disbelieve his evidence. Shri Prasanta Burman, (WW 2) has only proved the membership register of Khan Mazdoor Congress and its extract (Ext. W 14). He has been examined only to prove that Rabi Mahato was a member of Khan Mazdoor Congress. It is unnecessary to consider this evidence because there is no doubt that Rabi Mahato was a member of the union on the date of the reference. As such, this is undoubtedly a case of industrial dispute and not an individual dispute.

31. I have already dealt with the evidence of Shri B. P. Tripathi (WW 3) and I have found myself unable to accept his evidence. I have also dealt with the evidence of Lakhan Ram Manjhi (WW 4) and have not accepted his evidence. Rabi Mahato is the last witness for himself and he is an interested witness. It is difficult to accept his evidence without reliable corroboration. I may, however, point out that he says that one reason why the operation of the sand line may be stopped is that the bunker becomes full with sand. That being so, the conveyor mazdoor must clean the conveyor belt and sand for, otherwise, the entire operation may stop.

32. As I have said, the very fact that Rabi Mahato who wrote pressing letters to the management upto 13th August 1964 did not write any other letter for about one and a half years indicates that he was duly informed about his dismissal on the 25th December, 1964.

33. On a careful consideration of the facts and circumstances of the case, I hold that Shri Nandkeolyar held the enquiry in accordance with principles of natural justice, that Rabi Mahato attended the enquiry while Shri P. G. Ghosh was being examined and that thereafter he left the place of enquiry abruptly, telling the enquiring officer that he could do what he liked.

Point (iv)

34. In view of the findings which I have recorded above, Rabi Mahato knew of his dismissal on the 25th December, 1964. It is not possible, therefore to accept his case that he first knew of his dismissal when he received a copy of the dismissal letter (Ext. M 30) along with the letter dated the 27th July, 1966 (Ext. M 39). I hold accordingly.

Point (v)

35. On the basis of the discussions and findings recorded above, I hold that the dismissal of Rabi Mahato is justified. The second question put in the schedule does not, therefore arise.

36. This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act.

(Sd.) KAMLA SAHAI,
Presiding Officer.

[No. 2/27/68-LR.II.]

ORDERS

New Delhi, the 12th August 1968

S.O. 2869.—Whereas an industrial dispute exists between the employers in relation to the New Ghusick Colliery of Messrs West Ghusick Coal Company Limited, Post Office Kalipahari, District Burdwan and their workmen represented by the Colliery Mazdoor Congress (HMS), Bengal Hotel, Post Office Asansol, Burdwan.

And whereas the said employers and the workmen have by a written agreement, in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to the arbitration of the person specified therein, and a copy of the said arbitration agreement has been forwarded to the Central Government ;

Now, therefore, in pursuance of the provisions of sub-section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the said arbitration agreement, which was received by it on the 1st August, 1968.

Agreement

Under Section 10A of the Industrial Disputes Act, 1947.

BETWEEN

*Name of the parties :**Representing employers*

Shri M. P. Roy,
Group Personnel Officer,
M/s. West Ghusick Coal Co. Ltd.,
P.O. Kalipahari,
Distt. Burdwan.

Representing workmen

Shri S. K. Rudra,
General Secretary,
Colliery Mazdoor Congress (HMS),
Bengal Hotel, P.O. Asansol,
Distt. Burdwan.

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of Shri K. Sharan, Regional Labour Commissioner (C), Asansol.

(i) Specific matters, in dispute.

"Keeping in view the recommendations of the Central Wage Board for the Coal Mining Industry as accepted by the Government of India in their resolution dated 21-7-1967 and also the nature of duties performed by the workmen concerned, whether the management of New Ghusick Colliery (P.O. Kalipahari, Distt. Burdwan) of M/s. West Ghusick Coal Co. Ltd. has correctly and properly designated the workmen named below and has correctly and properly placed them in the grade/category and fixed their basic pay/wages in the scale of basic pay/wages as shown against their respective names :

| Sl. No. | Name | Existing designation | Existing Grade/Category | Existing scale of basic pay/wages |
|---------|--------------------------|----------------------|-------------------------|-----------------------------------|
| 1. | Shri Rama Shankar Tiwary | Lamp Issuer | Gr. III | Rs. 180—5—230—7—265 |
| 2. | " Mahesh Yadav | Fitter Helper | Cat. II | Rs. 5.35—0.12—Rs. 6.55 |
| 3. | " Shyamapada Dawn | Survey Boy | Cat. I | Rs. 5.00—0.10—Rs. 6.00 |
| 4. | " Kashi Nath Sonar | Timber Mazdoor | Cat. II | Rs. 5.35—0.12—Rs. 6.55 |
| 5. | " Jagdish Prasad | Timber Mazdoor | Cat. II | Rs. 5.35—0.12—Rs. 6.55 |
| 6. | " Jagdish Dhari | Timber Mazdoor | Cat. II | Rs. 5.35—0.12—Rs. 6.55 |
| 7. | " Makhlu Chamar | Gate Mazdoor | Cat. I | Rs. 5.00—0.10—Rs. 6.00 |
| 8. | " Abodh Narayan Jha | General Mazdoor | Cat. I | Rs. 5.00—0.10—Rs. 6.00 |
| 9. | " Mahakant Jha | Pit Head Bath | | |
| | | Guard | Gr. H | Rs. 140—3—170—4—178 |
| 10. | " Debu Mitra | Bailing Mazdoor | Cat. I | Rs. 5.00—0.10—Rs. 6.00 |
| 11. | " Sukhdeo Ahir | Timber Mazdoor | Cat. I | Rs. 5.00—0.10—Rs. 6.00 |
| 12. | " Ranjendra Choubey | Timber Mazdoor | Cat. II | Rs. 5.35—0.12—Rs. 6.55 |

2. If not, to what relief are the workmen concerned entitled and from which date ?”

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|--|---|
| (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking. | Employers in relation to New Ghusick Colliery, (P.O. Kalipahari, Distt. Burdwan of M/s. West Ghusick Coal Co. Ltd. and their workmen. |
| (iii) Name of the Union, if any, representing the workmen in question. | Colliery Mazdoor Congress (HMS), Bengal Hotel, P.O. Asansol, Distt. Burdwan. |
| (iv) Total number of workmen employed in the undertaking affected. | 470 |
| (v) Estimated number of workmen affected or likely to be affected by the dispute. | 12 (twelve). |

We further agree that the decisions of the arbitrator shall be binding on us.

The arbitrator shall make his award within a period of six months or within such further time as is entered by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Signature of the parties:

Representing employers :

Sd/- M. P. ROY,
29-7-1968.

Representing workmen

Sd/- S. K. RUDRA,
29-7-1968.

Witness :

(1) Sd/- M. N. SINGH,
29-7-1968.

(2) Sd/- N. K. GHOSE,
29-7-1968.

[No. 6/51/68-LRII.]

New Delhi, the 13th August 1968

S.O. 2870.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Bhaladih Sand Line of Messrs Equitable Coal Company Limited, P.O. Dishergarh, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

Keeping in view the recommendations of the Central Wage Board for the Coal Mining Industry, as accepted by the Central Government under its Resolution No. WB.16(5)/66, dated the 21st July, 1967, whether the demand of Shri Budhadeb Chattaraj, Canteen Incharge of Bhaladih Sand Line of M/s. Equitable Coal Company Limited, for his placement in the clerical Grade II and fixation of his pay in the scale of Rs. 205-7-275-10-325 is justified? If so, to what relief is the workman entitled and from which date?

[No. 6/50/68-LR-II.]

S.O. 2871.—Whereas by the order of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), No. 2/149/68-LRII-I, dated the 13th August 1968, an industrial dispute between the employers in relation to the management of East Basuria Colliery of Messrs East Basuria Colliery Company Private Limited, Post Office,

Kusunda, District Dhanbad and their workmen has been referred to the Industrial Tribunal No. 3, Dhanbad, for adjudication and it is necessary to prohibit the continuance of the strike in existence in the East Basuria Colliery in connection with the said dispute;

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby prohibits the continuance of the strike in existence in connection with the said dispute in the said colliery.

[No. 2/149/68-LRII-II.]

S.O. 2872.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the East Basuria Colliery of Messrs East Basuria Colliery Company Private Limited, Post Office Kusunda, District Dhanbad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal No. 3, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of East Basuria Colliery of Messrs East Basuria Colliery Company Private Limited, Post Office Kusunda, District Dhanbad was justified in retrenching Sarvashri Ramashis Singh and Tapeswar Pandey, Senior Over-men, with effect from the 15th July, 1968? If not, to what relief are these workmen entitled?

[No. 2/149/68-LRII-I.]

BALWANT SINGH, Under Secy.

CENTRAL BOARD OF EXCISE AND CUSTOMS

CUSTOMS

New Delhi, the 24th August 1968

S.O. 2873.—In exercise of the powers conferred by section 9 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby declare Durgapur in the State of West Bengal to be a warehousing station.

[No. 120/68-Customs/F. No. 3/35/68-Cus.VII.]

M. S. SUBRAMANYAM, Under Secy.